COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

DIFFÉREND TERRITORIAL

(JAMAHIRIYA ARABE LIBYENNE/TCHAD)

VOLUME IV

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

TERRITORIAL DISPUTE

(LIBYAN ARAB JAMAHIRIYA/CHAD)

VOLUME IV

Référence abrégée :

C.I.J. Mémoires, Différend territorial (Jamahiriya arabe libyenne/Tchad), vol. IV

Abbreviated reference :

I.C.J. Pleadings, Territorial Dispute (Libyan Arab Jamahiriya/Chad), Vol. IV

ISSN 0074-4433
ISBN 978-92-1-071128-9

Sales number
N° de vente : 1016

DIFFÉREND TERRITORIAL
(JAMAHIRIYA ARABE LIBYENNE/TCHAD)

TERRITORIAL DISPUTE
(LIBYAN ARAB JAMAHIRIYA/CHAD)

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

DIFFÉREND TERRITORIAL

(JAMAHIRIYA ARABE LIBYENNE/TCHAD)

VOLUME IV

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

TERRITORIAL DISPUTE

(LIBYAN ARAB JAMAHIRIYA/CHAD)

VOLUME IV

IMPRIMÉ EN FRANCE
PRINTED IN FRANCE

La présente affaire, inscrite au rôle général de la Cour sous le numéro 83 le 3 septembre 1990, a fait l'objet d'un arrêt rendu le 3 février 1994 (*Différend territorial (Jamahiriya arabe libyenne/Tchad), arrêt, C.I.J. Recueil 1994*, p. 6).

Les documents relatifs à cette affaire sont publiés dans l'ordre suivant:

Volume I. Compromis; mémoire de la Jamahiriya arabe libyenne.
Volume II. Mémoire de la Jamahiriya arabe libyenne *(suite)*.
Volume III. Mémoire du Tchad.
Volume IV. Contre-mémoire de la Jamahiriya arabe libyenne.
Volume V. Contre-mémoire du Tchad.
Volume VI. Réplique de la Jamahiriya arabe libyenne; réplique du Tchad.
Volume VII. Comptes rendus d'audience.

*

Aux fins de la présente édition, la Cour a décidé que les pièces de la procédure écrite seront reproduites *intégralement*; cette édition comprendra donc aussi les documents annexés auxdites pièces — qui ne sont pas mis en ligne sur le site Internet de la Cour. La reproduction de l'ensemble des documents annexés dans cette édition permettra aux praticiens de mieux apprécier, dans toute sa portée, l'argumentation développée par les Parties dans leurs écritures. Comme à l'accoutumée, les comptes rendus des audiences publiques sont publiés à la suite des pièces de procédure écrite; ces comptes rendus apparaissent ci-après dans leur version finale corrigée — qui complète ainsi utilement la version provisoire mise en ligne sur le site de la Cour.

La Cour souhaitant que lesdits documents paraissent aussi rapidement que possible, il a été décidé, chaque fois que les moyens techniques le permettraient, de reproduire les pièces de procédure en l'état où elles ont été présentées par les Parties; cela a été fait en l'espèce, sauf quand la qualité technique de certains documents annexés était insuffisante aux fins de leur impression.

Ainsi, certaines pièces de la présente édition ont été scannées et, de ce fait, les titres courants du présent ouvrage comportent deux genres de folios: outre la pagination continue habituelle, on trouvera, entre crochets, la pagination d'origine des pièces scannées, à laquelle il faudra se reporter en cas de renvoi.

La Haye, 2013.

This case, entered on the Court's General List on 3 September 1990 under number 83, was the subject of a Judgment delivered on 3 February 1994 (*Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 6).

The documents relating to the case are being published in the following order:

Volume I. Special Agreement; Memorial of the Libyan Arab Jamahiriya.
Volume II. Memorial of the Libyan Arab Jamahiriya *(continuation)*.
Volume III. Memorial of Chad.
Volume IV. Counter-Memorial of the Libyan Arab Jamahiriya.
Volume V. Counter-Memorial of Chad.
Volume VI. Reply of the Libyan Arab Jamahiriya; Reply of Chad.
Volume VII. Verbatim Records of the Hearings.

*

For the purposes of this edition, the Court has decided that the written pleadings will be reproduced *in full*; it will therefore also include the documents annexed to those pleadings, which are not made available on the Court's website. The reproduction of all the annexed documents in this edition will enable practitioners to appreciate better the full scope of the arguments developed by the Parties in their written pleadings. As usual, the verbatim records of the public hearings appear after the pleadings; these verbatim records are published here in their final corrected versions, providing a useful supplement to the provisional versions made available on the Court's website.

Since the Court wishes to publish these documents as quickly as possible, it has been decided, where technically feasible, to reproduce the pleadings in the form in which they were submitted by the Parties; that has been done here, except when the technical quality of certain annexed documents was not sufficient for them to be published.

Some documents in this edition have thus been scanned, and there are consequently two types of page numbering for the items included in these volumes: in addition to the normal continuous pagination, the original page numbers of the scanned documents are provided in brackets for reference purposes.

The Hague, 2013.

TABLE DES MATIÈRES — CONTENTS

Page

Counter-memorial of the Libyan Arab Jamahiriya — Contre-mémoire de la Jamarihiya arabe libyenne

PART I. INTRODUCTION 7

CHAPTER I. AN OVERVIEW OF THE CASE AS SET OUT IN CHAD'S MEMORIAL . . 7

Section 1. The difference in scope between the cases presented by Libya and Chad 7

Section 2. Chad's defence of its French colonial past; its ignoring of the rights of the Indigenous peoples 18

Section 3. Chad's reliance on recognition, acquiescence and estoppel . . 20

Section 4. Major changes in the case presented by Chad to the UN: the three different theories now advanced by Chad 22

Section 5. Significant gaps and failures of proof in Chad's case 25

CHAPTER II. STABILITY OF AFRICAN FRONTIERS 28

CHAPTER III. THE CRITICAL DATE IN THIS CASE 31

CHAPTER IV. STRUCTURE AND GENERAL CONTENTS OF THE COUNTER-MEMORIAL 32

PART II. THE TASK OF THE COURT 34

CHAPTER I. THE TERMS OF THE SPECIAL AGREEMENT 34

CHAPTER II. IN ATTRIBUTING TERRITORY THE COURT WOULD BE CARRYING OUT A NORMAL JUDICIAL FUNCTION 39

Section 1. Chad's incorrect contentions 39

Section 2. Precedent and doctrine 44

Section 3. Conclusions 51

PART III. CHAD'S FIRST THEORY IS RULED OUT BY ARTICLE 3 OF THE 1955 TREATY 53

CHAPTER I. THE MEANING AND INTENT OF ARTICLE 3 OF THE 1955 TREATY . . 54

Section 1. The text of article 3 54

Section 2. The travaux préparatoires and other indicia of intent 59

(a) Libyan and French travaux and related records of the British foreign offic. 59

(b) The "Aouzou incident" 65

(c) The map allegedly produced by Libya during the july-august 1955 negotiations 78

(d) The absence of the 1935 Treaty from the annex I List of actes internationaux 83

Section 3. Contemporary statements of the Libyan and French Governments; the parliamentary debates 86

Section 4. General Assembly Resolution 392(V) and the 1955 Treaty . . 93

Section 5. Aftermath of the signing of the 1955 Treaty 103

CHAPTER II. THE INVALIDITY OF CHAD'S FIRST THEORY UNDER ARTICLE 3 . . 108

CHAPTER III. CONCLUSIONS 113

PART IV. CHAD'S SECOND THEORY IS RULED OUT BY THE AGREEMENTS THEMSELVES AND BY ARTICLE 3 OF THE 1955 TREATY 115

Page

Chapter I. Introduction 115

Chapter II. International Agreements of Relevance Omitted from the Annex I List 118

Chapter III. The 1899 Anglo-French Additional Declaration 123

Section 1. The intended direction of the article 3 line 129

Section 2. The non-annexed map 148

Chapter IV. The 1900-1902 Accords 169

Section 1. Background of the accords 170

Section 2. Canevaro speech (1899) 172

Section 3. Prinetti Declaration (1901) 174

Section 4. The 1900 Accord 178

Section 5. The 1902 Accords 180

(a) The 1902 Anglo-Italian Accord 180

(b) The 1902 Franco-Italian Accord 185

(i) Background 185

(ii) Form and text 187

(iii) Reference to the non-annexed map 190

(iv) Italy's alleged recognition of a Tripolitanian boundary 193

(v) Italy's alleged renunciation of the rights of the Ottoman Empire; the CM's faulty analysis of Ottoman rights and claims 195

(vi) The invalidity of the renunciation argument 204

Chapter V. The 1912 Franco-Italian Agreement 208

Chapter VI. The 1919 Anglo-French Convention (8 September) 213

Section 1. The convention's text 216

Section 2. Maps 221

Section 3. Background and travaux 227

(a) British travaux 229

(b) Tittoni speech 236

Section 4. Other contentions of Chad 238

Section 5. Aftermath of the 1919 Convention: the 1924 demarcation; Italian protests; French and British attempts to reconcile their entirely different views in replying to Italy 244

Section 6. Chad's contention that the 1919 line was opposable to Italy . . 254

Section 7. Chad's contention that in 1934, as successor to Great Britain's territorial interests in the region of the Sarra triangle, Italy became bound by the 1919 Convention 261

Chapter VII. The 1919 Franco-Italian Accord (12 September) 268

Section 1. Background and text 268

(a) Marin reports 271

(b) An implementation of article 13 of the 1915 Treaty of London . . . 274

Section 2. Chad's contentions as to the 12 September Accord's significance 275

Chapter VIII. Conclusions 280

Part V. Chad's Third Theory, based on French Colonial Effectivities, Is Ruled Out by Article 3 of the 1955 Treaty Itself; Is Invalid in Law; and Is not Supported by the Facts 283

Chapter I. The Third Theory Is not Legally Supportable 283

Page
CHAPTER II. THE LIMITED NATURE AND EXTENT OF THE FRENCH PRESENCE IN THE BORDERLANDS 286
Section 1. Introduction 286
Section 2. The period 1899-1912 293
Section 3. The period 1913-1919 305
Section 4. The period 1920-1935 328
CHAPTER III. THE POST-1935 PERIOD 347
Section 1. General observations 347
Section 2. Certain events of some relevance 351
(a) French-Italian Armistice Commission 351
(b) The French post at Aouzou 352
(c) Libya's assumption of administration over parts of the borderlands after 1972 355
(d) The French "Lignes rouges", 1983-1984, and events both before and after their establishment 364
CHAPTER IV. CONCLUSIONS 367
PART VI. THE 1935 TREATY OF ROME AND RELATED ACCORDS 370
CHAPTER I. POINTS ON WHICH LIBYA AND CHAD AGREE 370
Section 1. Italy's sacrifice of its territorial rights and interests 371
Section 2. Unlike the other accords of the same day, the 1935 Treaty never formally entered into force 372
Section 3. Since the 1935 Treaty failed to enter into force, the agreed boundary never took effect, leaving the legal status of the boundary unchanged 373
Section 4. France failed to discharge its obligations to Italy to provide "equitable compensation" under article 13 of the 1915 Treaty of London 374
CHAPTER II. POINTS OF DISAGREEMENT BETWEEN LIBYA AND CHAD 375
Section 1. Recognition of appurtenance or cession of French territories . . 376
(a) The article 13 argument 377
(b) The map allegedly annexed to the 1935 Treaty 378
(c) The requirements that the 1935 Treaty be ratified 379
Section 2. Subsequent interpretation 382
Section 3. The effect of France's failure to fulfill its obligations under article 13 of the 1915 Treaty of London 385
CHAPTER III. CONCLUSIONS 390
PART VII. GOOD FAITH IN THE LAW OF TREATIES 392
CHAPTER I. INTRODUCTION: DOCTRINE 392
CHAPTER II. JURISPRUDENCE 396
CHAPTER III. APPLICATION OF THE PRINCIPLE OF GOOD FAITH IN THE PRESENT CASE 398
Section 1. The missing map 399
Section 2. The 1955 negotiations 405
Section 3. Conclusions 413
PART VIII. THE MYTH OF RECOGNITION, ACQUIESCENCE OR CONSOLIDATION OF THE BOUNDARY CLAIMED BY CHAD 414
CHAPTER I. INTRODUCTION: THE BASIS OF "CONSOLIDATION" AND ITS LIMITS . 414

Page
Chapter II. The Questions Raised in Any Plea of "Consolidation" 420
Chapter III. The Elements of "Consolidation" Adressed by Chad 422
Section 1. Italy's "recognition" by virtue of the Laval-Mussolini Treaty of 1935 422
Section 2. The 1938 "Jef-Jef incident" 425
Section 3. The debates in, and measures taken by, the United Nations: 1948-1952 427
Section 4. Libya's own conduct, post-independence 434
(a) The "Aouzou incident" of 1955 434
(b) The negotiations in July/August 1955 leading to the 1955 Treaty . . 436
(c) Libya's "silence" at the time of Chad's admission to the United Nations 437
Chapter IV. Elements Relevant to Any Argument of "Consolidation" Ignored by Chad 438
Section 1. The attitude and conduct of Great Britain 438
Section 2. The conduct of the Ottoman empire. 440
Section 3. The conduct of the Senoussi. 443
Section 4. The conduct of France 444
Section 5. The conduct of Chad itself 446
Chapter V. Conclusions 448
Part IX. The Process of Determining the Boundary in the Present Case . 450
Chapter I. Introduction 450
Chapter II. The Criteria To Be Applied 452
Section 1. Priority of title *(prior in tempore, potior in jure)*. 452
(a) The title of Libya 453
(b) The title of Chad 455
Section 2. The criterion of "effective" possession 457
Section 3. The criterion of "peaceful" possession. 459
Section 4. The criterion of legality supplied by the inter-temporal law . . 461
Section 5. The relevance of recognition or acquiescence in the French claims of title 462
Section 6. The conduct of the Parties directly affected, as reflected in their proposals for settlement 463
Section 7. Other "equitable" criteria 465
(a) The ties to the north of the inhabitants of the borderlands 467
(b) Geographical considerations 468
(c) Economic considerations 468
(d) Historical considerations 469
(e) Considerations of stability, peace and security 469
Submissions 472

Counter-memorial of the Libyan Arab Jamahiriya — Contre-mémoire de la Jamarihiya arabe libyenne

Annexes to the Counter-memorial of the Libyan Arab Jamahiriya

---

* Only those annexes preceded by an asterisk have been reproduced below. *[Note by the Registry.]*

* Seules les annexes précédées d'un astérisque ont été reproduites. *[Note du Greffe.]*

Page

*_Annex LC-M 1_. Correspondence of the Registrar relating to the problem with Chad's evidence 476

*_Annex LC-M 2_. Libya's note verbale to the French Ministry of Foreign Affairs 501

*_Annex LC-M 3_. Petition of the Tibesti tribes dated 3 November 1991 . . . 507

*_Annex LC-M 4_. "Situation économique et politique des anciennes colonies itaiennes (d'après le rapport de la commission d'enquête des quatre puissances dans les anciennes colonies italiennes)", Notes documentaires et études, 29 novembre 1948, No. 1026, Série internationale (CLXXXVIII), pp. 1-32 516

Annex LC-M 5. Report of Dr. Shanawany, dated 31 March 1955 (CM, Annex 272)

*_Annex LC-M 6_. Foreign Office dispatch of 4 August 1955 from A.A. Duff of the British Embassy in Paris to T.E. Bromley of the African Department of the Foreign Office in London (FO 371/113897) 549

*_Annex LC-M 7_. Dispatch from Ambassador Graham to the Foreign Office, dated 29 July 1955 (FO 371/113896 170 799) 552

*_Annex LC-M 8_. Pelt, A., _Libyan Independence and the United Nations_, New Haven and London, Yale University Press, 1970, p. 420 554

*_Annex LC-M 9_. Minutes of 17 November 1956 of the French/Libyan negotiating delegation frontier démarcation sub-committee, and of 20 November 1956 of the Libyan-Algerian frontier negotiating sub-committee, extracted from Libya's unilateral record. English translation 557

*_Annex LC-M 10_. Documents from the Foreign Office describing the incidents along the Algerian frontier and in the Ghat-Toummo sector between Libya and France 563

*_Annex LC-M 11_. English translation of the speech of the Foreign Minister Admiral Canevaro to the Italian Senate on 24 April 1899 605

Annex LC-M 12. Memorandum of W.E. Beckett, Second Legal Adviser to the Foreign Office, dated 29 August 1934, enclosed in dispatch from C. Warner, dated 31 August 1934

*_Annex LC-M 13_. _Histoire militaire de l'Afrique équatoriale française_, Paris, imprimerie nationale, 1931, pp. 239, 424, 427-431, 450-451, 458-462, 464-467, 476-477, 479, 483 and 485-487 611

*_Annex LC-M 14_. Documents relating to the description of stucture of Ottoman rule in Libya (English translation), and to the Organization of the Senoussi (English translation), prepared at the JIHAD Center in Tripoli 637

*_Annex LC-M 15_. _Island of Palma_ Case, _Reports of International Arbitral Awards_, Vol. II, p. 840 644

Annex LC-M 16. Dispatches from Merlet, Administrator of the territory of Chad, dated 20 March 1916, 17 June 1916 and 1 July 1916

*_Annex LC-M 17_. Foreign Office documents from the British Archives dated 1914 647

Annex LC-M 18. Extract from the "Historique du poste de Tekro"

*_Annex LC-M 19_. Correspondence relating to the Balbo overflight incident of 1931 650

Annex LC-M 20. French text of the Italian note of 9 June 1934 (CM, Annex 142)

Annex LC-M 21. Note for the Minister of Foreign Affairs concerning General Tilho's criticism of the 1935 Treaty, 29 January 1935

Annex LC-M 22. Dispatch from Mr. Louis Marin, Senior Minister of State without portfolio, to Laval, Minister of Foreign Affairs, dated 19 February 1935

Page

Annex LC-M 23. Notes of the Quai d'Orsay in preparation for negotiations of the 1935 Treaty. Quai d'Orsay report on the results of the Treaty, dated 24 January 1935

Annex LC-M 24. Statement of the Chadian President Tombalbaye at the banquet held in Tripoli by Colonel Qadhafi in December 1972, extracted from the BBC World Broadcast monitoring (SWB ME/4178/A/1, 23 December 1972)

Annex LC-M 25. Accord of Lagos, 21 August 1979

**Annex LC-M 26*. Colonel Spartacus: *Opération Manta, Tchad 1983-1984*, Paris, Plon, 1985, p. 142. 656

**Annex LC-M 27*. Rousseau, C.: "Chronique des faits internationaux", *Revue générale de droit international public*, Tome 89, 1985, pp. 477 and 479 . . 658

**Annex LC-M 28*. Buijtenhuijs, R., *Le frolinat et les guerres civiles du Tchad (1977-1984)* 661

**Annex LC-M 29*. *Yearbook of the International Law Commission*, Vol. I, 1974, pp. 208 and 218 664

**Annex LC-M 30*. *Yearbook of the International Law Commission*, Vol. II, 1972, pp. 298 and 300 668

**Annex LC-M 31*. Rosenne, S., *Developments in the Law of Treaties 1945-1986*, Cambridge, Cambridge University Press, 1989, pp. 129, 137, 173 and 174 672

**Annex LC-M 32*. Zoller, E., *La bonne foi en droit international public*, Paris, Pedone, 1977, pp. 49 and 53 678

**Annex LC-M 33*. *Yearbook of the International Law Commission*, Vol. II, 1966, p. 245 682

**Annex LC-M 34*. Cot, J.P., *La bonne foi dans la conclusion du traité*, *Revue belge de droit international*, 1968, pp. 142-143 685

**Annex LC-M 35*. Fitzmaurice, G., "The Law and Procedure of theof International Law", *British Yearbook of International Law*, Vol. 35, 1959, p. 212 688

**Annex LC-M 36*. *Lake Lanoux* Arbitration, *International Law Reports*, Vol. 24, 1957, p. 128 691

**Annex LC-M 37*. Opinions in the Cases of the *Lusitania*, *Reports of International Arbitral Awards*, Vol. II, p. 43 694

**Annex LC-M 38*. *Goldenberg and Son* v. *Germany*, *Reports of International Arbitral Awards*, Vol. II, p. 907 697

**Annex LC-M 39*. Pension of officials of the Saar Territory, *Reports of International Arbitral Awards*, Vol. III, p. 1564 700

**Annex LC-M 40*. *Saudi Arabia* v. *Arabian American Oil Co.*, *International Law Reports*, Vol. 27, 1959, p. 196 703

**Annex LC-M 41*. De Visscher, C., *Théories et réalités en droit international public*, Paris, Pedone, 1960, pp. 255-256 706

**Annex LC-M 42*. Johnson, D.H.N., "Acquisitive Prescription in International Law", *British Yearbook of International Law*, Vol. 27, 1950 710

**Annex LC-M 43*. Johnston, D.H.N., "Consolidation as a Root in Title in International Law", *Cambridge Law Journal*, 1954, pp. 215 and 222-225 . 714

**Annex LC-M 44*. *Yearbook of the International Law Commission*, Vol. II (part 2), 1980, pp. 30-34. 721

Page

Annex LC-M 45. Fifth Report on the Content, Forms and Degrees of State Responsibility (part two of the draft articles), by Mr. Willem Riphagen, Special Rapporteur, Report of the International Law Commission on the work of its Thirty-sixth Session, 7 May-27 July 1984, United Nations, *Official Records of the General Assembly*, Documents A/CN.4/380, pp. 4-9 and A/CN.4/380 Corr.1 728

Annex LC-M 46. Fitzmaurice, G., "The Law and Procedure of the International Court of Justice", *British Yearbook of International Law*, Vol. 30, 1953, p. 45 737

Annex LC-M 47. Correspondence relating to the Jef-Jef incident of 1938 (CM, Annexes 195, 196, 197 and 203) 740

Annex LC-M 48. Lindley, M.F., *The Acquisition and Government of Backward Territory in International Law*, London, Longmans, 1926, p. 140

Annex LC-M 49. Bardonnet, D., "Equité et frontières terrestres", *Mélanges offerts à Paul Reuter*, Paris, Pedone, 1981, p. 66 746

Annex LC-M 50. Munkman, A.L.W., "Adjudication and adjustment, International judicial decision and the settlement of territorial and boundary disputes", *British Yearbook of International Law*, Vol. 46, 1972-1973, p. 116 . 749

Annex LC-M 51. Award rendered on 23 January 1933 by Chief Justice Hughes, *Guatemala/Honduras*, *Reports of International Arbitral Awards*, Vol. II, p. 1352 752

Annex LC-M 52. *Indio-Pakistan Western Boundary (Rann of Kutch) (India v. Pakistan), Award of 19 February 1968*, *International Law Reports*, Vol. 50, p. 320. 755

CERTIFICATION 758

[illegible]

TERRITORIAL DISPUTE
(LIBYAN ARAB JAMAHIRIYA/CHAD)

COUNTER-MEMORIAL

SUBMITTED BY THE

GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

VOLUME 1
27 MARCH 1992

Map Number		Appearing at Para.
LC-M 1	1890 Ottoman claim 1928 Maximum Italian program	1.07
LC-M 2	Strict southeast line East-southeast line (Livre jaune map) Notional Tripolitanian frontier (Livre jaune map)	1.07
LC-M 3	Bardaï - Gouro line	1.10
LC-M 4	1928 French offer 1929 Italian claim 1948 French rectification proposal	1.11
LC-M 5	1928 Maximum Italian program 1928 Minimum Italian program 1929 Italian claim	1.12
LC-M 6	1911 Vilayet of Tripoli proposal 1910-1912 de facto line	1.13
LC-M 7	1929 Italian claim 1935 Franco-Italian Treaty line 1948 French rectification proposal	1.14
LC-M 8	Strict southeast line 1911 Vilayet of Tripoli proposal 1929 Italian claim 1935 Franco-Italian Treaty line	1.15
LC-M 8A	Libya's claim (Libya-Chad borderlands) Strict southeast line 1911 Vilayet of Tripoli proposal 1929 Italian claim 1935 Franco-Italian Treaty line	1.15
LC-M 9	Locations of: Aouzou, Moya and the Jef-Jef Plateau	3.34
LC-M 10	Strict southeast line 1935 Franco-Italian Treaty line	3.59
LC-M 10A	Location of Edjelé oil field and Serdeles	3.78
LC-M 11	"Libya: Sketch Map of Frontiers", annexed to 1950 U.N. Secretariat Study	3.92
LC-M 12	1890 Ottoman claim Caravan routes Say-Barroua line	4.11

LC-M 13 Ottoman Garrisons:
Ghadamès (1863)
Mourzouk (1865)
Ghat (1875) 4.12

LC-M 14A 1906 British War Office map
(revised 1913) showing
strict southeast line 4.18

LC-M 14B 1914 British War Office map
showing strict southeast line 4.18

LC-M 15A 1906 British War Office map
(revised 1924) showing
1919 Anglo-French Convention line
(east-southeast) 4.18

LC-M 15B 1914 British War Office map
(revised 1935) showing
1935 Treaty line 4.18

LC-M 16 Negotiations Preceding the
1899 Anglo-French Declaration 4.23

LC-M 17 B.C.A.F. Map: 1899
(southeast line added) 4.34

LC-M 18A French Army Map: 1896
Strict southeast line
East-southeast line (Livre jaune map)
1919 east-southeast line 4.36

LC-M 18B Justus Perthes Map: 1892
(showing same three lines) 4.36

LC-M 18C B.C.A.F. Map: 1899
(showing same three lines) 4.36

LC-M 18D Times Atlas of the World Map: 1990
(showing same three lines) 4.40

LC-M 19 Territory Encompassed by:
Strict southeast line
East-southeast line (Livre jaune map) 4.51

LC-M 20 Territory Encompassed by:
East-southeast line (Livre jaune map)
1919 Anglo-French Convention line
(east-southeast) 4.72

LC-M 21 Territory Encompassed by:
Strict southeast line
1919 Anglo-French Convention line
(east-southeast) 4.162

LC-M 22 Actual Topography US French Army Map: 1896 (overlay) 4.71

LC-M 23 Actual Topography US Justus Perthes Map: 1892 (overlay) 4.71

LC-M 24 Actual Topography US B.C.A.F. Map: 1899 (overlay) 4.71

LC-M 25 "Extrait" of the Livre jaune map appearing at CM, page 162 .... 4.53

LC-M 26 Reproduction of the Livre jaune map (fold-out) 4.53

LC-M 27 Prinetti Declaration, 1901 .... 4.88

LC-M 28 Ottoman Occupation of the Libya-Chad Borderlands: 1908-1913 .... 4.139, 8.62

LC-M 28A 1912 French Ministry of Colonies map 4.156

LC-M 29 Anglo-French Convention of 8 September 1912 .... 4.163

LC-M 30 1919 Anglo-French Convention Map (Geographical Section, Peace Congress, No. 224) 4.174

LC-M 31A French Army Map: 1896 with Lord Salisbury's proposal for the Article 3 line 4.175

LC-M 31B Justus Perthes map: 1892 with Lord Salisbury's proposal for the Article 3 line 4.175

LC-M 32 Colonel Tilho's map (1912-1917) 4.176

LC-M 33 Colonel Tilho's map (1912-1917) with strict southeast line .... 4.184, fn. 223

LC-M 34 Reproduction of Livre jaune map with a 1 degree grid showing end point of line at 19°N latitude (fold-out) 4.196

LC-M 35 Italo-Anglo-Egyptian Accord of 20 July 1934 .... 4.237

LC-M 36 Franco-Italian Accord of 12 September 1919 .... 4.244
LC-M 37 Chad's Contentions as to the Significance of the 12 September 1919 Accord 4.254
LC-M 38 Area of French Military Concentration after 1913 .... 5.19
LC-M 39 Commercial Arrangement between Great Britain and France: 1899 Declaration 5.23
LC-M 40 French Military Incursion into the Libya-Chad Borderlands: 1913 .... 5.24
LC-M 41 Ottoman Civil and Military Control over the Libya-Chad Borderlands: 1908-1912 .... 5.25
LC-M 42 Comparison between: 1890 Ottoman Claim; 1911 Recommendation of Vilayet of Tripoli 5.28
LC-M 43 French Military Battles in the Libya-Chad Borderlands: 1913 .... 5.38
LC-M 44 French Military Deployment in the Libya-Chad Borderlands: 1914 .... 5.41
LC-M 45 Comparison: French Military Presence: 1914; Strict southeast line; 1935 Franco-Italian Treaty line; 1919 Anglo-French Convention line 5.41
LC-M 46 French Military Incursion Into Tibesti: 1914-1916 .... 5.47
LC-M 47 Toubou Attack on French Military Convoy at Yeki, 12 March 1915 .... 5.52
LC-M 48 French Military Battles in the Libya-Chad Borderlands: 1914-1927 .... 5.60
LC-M 49 "Zone à Surveiller" Implemented by the French Military: 1930 .... 5.77
LC-M 50 French Military Governor at Tekro: 1934 .... 5.87

LC-M 51 Comparison Between:
French 1910-1912 de facto line;
Vilayet of Tripoli Proposal, 1911 .... 8.62

LC-M 52 1926 Italian Ministry of Colonies Map
(no southern boundary) 8.33

LC-M 53 1937 Italian Ministry of Colonies Map
(1935 line) 8.33

LC-M 54 1939 Italian Ministry
(Instituto Geografico de Agostini-Novara)
(no southern boundary) 8.33

LC-M 55 Libya's Claim
(with Libya-Chad Borderlands) 9.57

PART I

INTRODUCTION

1.01 This Counter-Memorial is filed by Libya in accordance with the Court's Order of 26 August 1991 fixing 27 March 1992 as the time-limit for the submission of Counter-Memorials by the Parties[1].

CHAPTER I. AN OVERVIEW OF THE CASE AS SET OUT IN CHAD'S MEMORIAL

1.02 In their initial pleadings the Parties have taken entirely different approaches to the resolution of the territorial dispute submitted to the Court by the Accord-Cadre of 31 August 1989. Some of the more striking of these differences will be noted here.

SECTION 1. The Difference in Scope Between the Cases Presented by Libya and Chad

1.03 The Chad Memorial is virtually a petitio principii: the Court must decide in favour of the precise boundary line advanced by Chad as a conventional international boundary, or else the Court, it seems, lacks the compétence to go further in settling the dispute. The CM presents what it terms "la fausse alternative", as if the Court had a choice to make between two boundary lines: the 1919 line and the 1935 line[2]. But there is no choice at all to be made here. Although the 1935 Treaty is by no means irrelevant to the present case, Libya's claim does not rely on the 1935 line as such; and there is no dispute between the Parties over whether the 1935 line is a conventional boundary under international law. So the Court's only task under Chad's thesis is to accept the precise boundary line claimed by Chad - and no other.

---

[1] Terms such as "Libya" and "Chad" as defined in Libya's Memorial will continue to be used in the same sense in the present pleading. References to Libya's Memorial and to Chad's Memorial will often be made by use of the acronyms "LM" and "CM", respectively.

[2] These and similar terms refer back to the LM: the "1919 line" is the line set out in Article 3 of the 1899 Anglo-French Additional Declaration as modified ("interpreted") by the Convention of 8 September 1919; the"1935 line" is the boundary agreed between Italy and France in the 1935 Treaty of Rome, ratifications of which were never exchanged.

1.04 Hence, Chad's Memorial has been presented in such a way that the facts and evidence and the legal arguments have all been carefully selected and arranged to arrive at one, and only one, precise result.

1.05 Libya's case is not so hampered; for Libya considers that the Parties have submitted their territorial dispute to the Court for resolution - whatever the outcome may be. Libya denies that there is any agreed boundary line between Libya and Chad; it maintains that the question of title to the Libya-Chad borderlands is the principal question put to the Court in this case. As a result, in the LM Libya has attempted to set out all of the relevant facts, evidence, documents and legal considerations for the Court's consideration in reaching its decision. Libya has taken special pains to demonstrate by maps and other illustrations the various elements to be considered in this case in as clear a fashion as possible. For Libya has nothing to hide and has only to look forward to the Court's resolution of this dispute.

1.06 This is not, in fact, a "boundary" dispute in the restricted sense, with the Court having to choose between two alternative lines proposed by the Parties. For no true boundary has ever existed. There are certainly many different sorts of lines that have at different times served different purposes: some have been claim lines, some lines agreed for particular purposes, some representing proposals for a boundary.

1.07 First of all, there is the boundary claimed by the Ottoman Empire in 1890[3]. The maximum program formulated by the Italian Ministry of Colonies in 1928 was similar to the Ottoman claim[4]. These are shown here on Map LC-M 1. Then there is the line agreed between Great Britain and France in Article 3 of the 1899 Declaration. As is repeatedly conceded in the CM, this was not intended to be a territorial boundary line[5]. It was intended to be the northern and eastern limit of French expansion in the region. As will again be demonstrated in this pleading, the 1899 line was intended to follow an almost exact or true southeast direction. However, the illustrative map unilaterally annexed by the French Foreign Ministry to the version of the 1899 Declaration published in its Livre jaune depicted an east-southeast rather than the intended

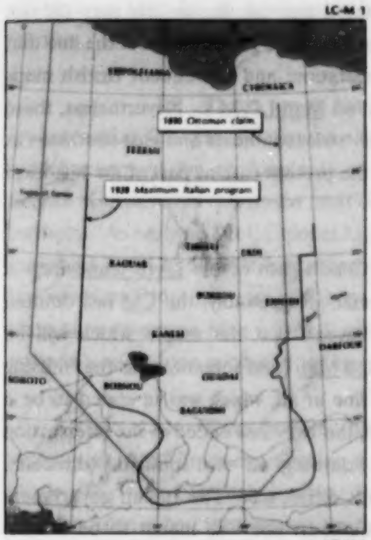
---

[3] See, LM, para. 5.10, and Maps Nos. 37 and 38.

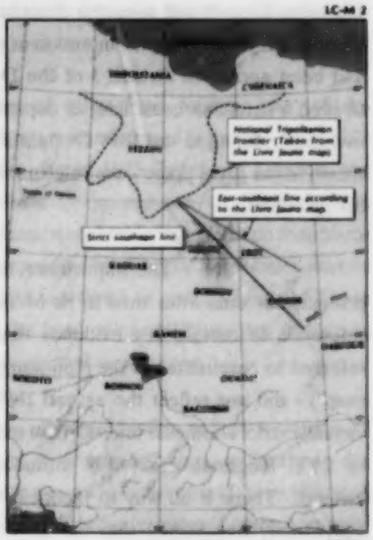
[4] See, LM, para. 5.251, and Maps Nos. 68 and 69.

[5] See, e.g., CM, pp. 144-145, para. 11; and p. 376, Conclusion 1 (xii).

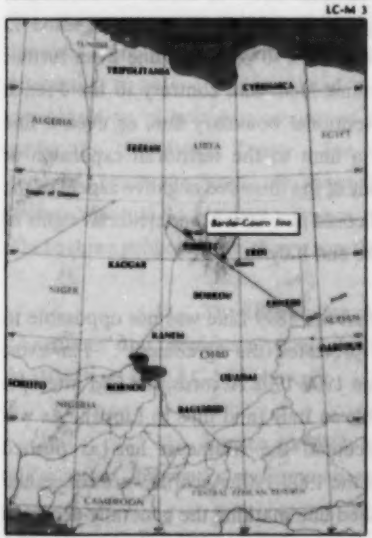
LC-M 1


TRIPOLITANIA
CYRENAICA
1890 Ottoman claim
FEZZAN
1938 Maximum Italian program
TIBESTI
ERDI
KAOUAR
BORKOU
ENNEDI
KANEM
DARFOUR
SOKOTO
BORNOU
OUADDAI
BAGUIRMI

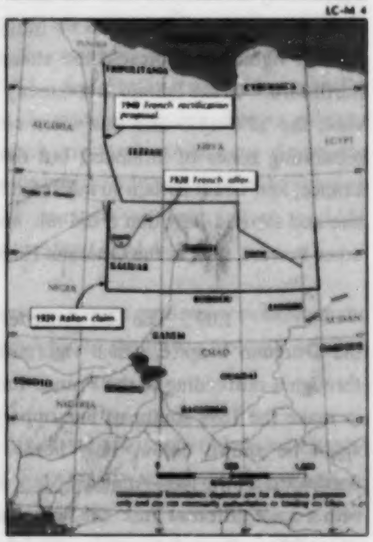
LC-M 2


TRIPOLITANIA
CYRENAICA
FEZZAN
National Tripolitanian frontier (Taken from the Livre Jaune map)
East-southeast line according to the Livre Jaune map
Strict southeast line
ERDI
KAOUAR
BORKOU
ENNEDI
KANEM
DARFOUR
SOKOTO
BORNOU
OUADDAI
BAGUIRMI

LC-M 3


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
Bardai-Gouro line
TIBESTI
ERDI
KAOUAR
NIGER
BORKOU
ENNEDI
SUDAN
KANEM
CHAD
DARFOUR
SOKOTO
BORNOU
OUADDAI
NIGERIA
BAGUIRMI
CAMEROON
CENTRAL AFRICAN REPUBLIC

LC-M 4


TUNISIA
TRIPOLITANIA
CYRENAICA
1940 French rectification proposal
ALGERIA
FEZZAN
LIBYA
EGYPT
1938 French offer
TIBESTI
ERDI
KAOUAR
NIGER
BORKOU
ENNEDI
1939 Italian claim
SUDAN
KANEM
CHAD
DARFOUR
SOKOTO
BORNOU
OUADDAI
NIGERIA
BAGUIRMI

Specially prepared for presentation to the International Court of Justice

southeast line. It will again be demonstrated that the line on this map did not accord with Great Britain's intention at the time as to the direction of the line that had been agreed in Article 3 of the Declaration; and subsequent British maps showed a strict southeast line, as depicted on Map LC-M 2. Nevertheless, these two lines relating to the 1899 Declaration - strict southeast and east-southeast as shown in the Livre jaune - are relevant in the present case as part of the historical background.

1.08 The importance to Chad's case of the Livre jaune map is brought out time after time in its Memorial. Regrettably, the CM has omitted reference to certain key evidence that reveals that the map - which will be referred to hereinafter as the Non-Annexed Map (and sometimes as the "missing map") - did not reflect the agreed 1899 line at all, which was intended to be a virtually strict southeast line. On the map, the 1899 line ended at the intersection of 24°E longitude and 19°N latitude, following an east-southeast direction, instead. There is no way to reconcile this difference. The Italian government consistently maintained that the 1899 southeast line was meant to be a strict southeast line (also illustrated on Map LC-M 2); and over a period of some 15 years it vigorously protested the attempt in 1919 to push this line even further northward. Great Britain consistently maintained that, contrary to the French view, the 1899-1919 line was not a conventional boundary line, or even a line separating zones of influence, but only a limit to the territorial expansion of France; and Great Britain so informed Italy of the intended negative aspect of the line and assured Italy that it did not, and could not, affect the territorial rights of other Powers, such as the Ottoman Empire and Italy.

1.09 The CM concedes that the 1899 Line was not opposable to the Ottoman Empire, which vigorously protested the agreement[6]. However, through a misreading of the Franco-Italian 1900-1902 Accords, the CM attempts to make the 1899 southeast line opposable to Italy (and thus to Libya). As will again be shown below, Italy never accepted the southeast line as pushed northward on the Non-Annexed Map, for the 1900-1902 Accords were concerned with a quite different line: the wavy, dashed line marking the generally-accepted view of Tripolitania's frontiers, which had not yet been delimited[7]. This line also appears on Map LC-M 2, where it is identified as the notional Tripolitanian frontier.

---

[6] See, CM, p. 176, para. 120.

[7] The Tripolitanian boundary from Ras Ajdir (on the Mediterranean coast) to Ghadamès was delimited in 1910; the boundary between Ghadamès and Toummo was delimited for the first time by the Franco-Italian Accord of 12 September 1919.

1.10 There are a number of other lines forming part of the background of this case. During the meetings of the Colonial Commission in 1919 over implementation of Article 13 of the secret 1915 Treaty of London, the French Government proposed that Bardaï be considered to lie in Libyan territory. As early as 1914, Colonel Largeau, who had led the French incursions into the Libya-Chad borderlands, had proposed that Gouro, the former seat of the Senoussi Order just east of Tibesti, be considered as part of Libya[8]. These places are shown on Map LC-M 3, and the kind of partial boundary line these proposals might have produced has been suggested on this map.

1.11 Then, in 1928, France proposed ceding to Italy a portion of territory south of Toummo, forming a sort of salient or bulge southward to the Djado oasis[9]. In 1929 Italy countered with a proposal that would have included only the Libya-Chad borderlands north of 18°N latitude within Libyan territory. This 1929 proposal of Italy would have left to Libya the entire regions of Tibesti, Ennedi, Ounianga and Erdi as well as the northern part of Borkou. It is interesting to note - jumping ahead to 1948 - that France proposed almost the opposite type of boundary as part of the disposition of Italy's African colonies under the 1947 Peace Treaty. The French proposal would have drawn the boundary across the Tropic of Cancer, thus leaving all of these regions to France's colony, the A.E.F. However, France never pursued this claim before the U.N. These three proposals are shown together on Map LC-M 4.

1.12 The 1929 Italian claim was a more modest proposal than the "maximum" and "minimum" programs formulated by the Italian Colonial Ministry in 1928[10], as Map LC-M 5 shows.

1.13 Earlier, in 1911, in preparation for scheduled delimitation negotiations between the Ottoman and French Governments, the vilayet of

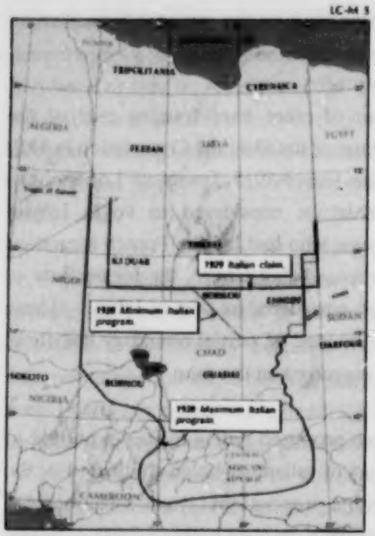
---

[8] See, para. 5.44, et seq., below.

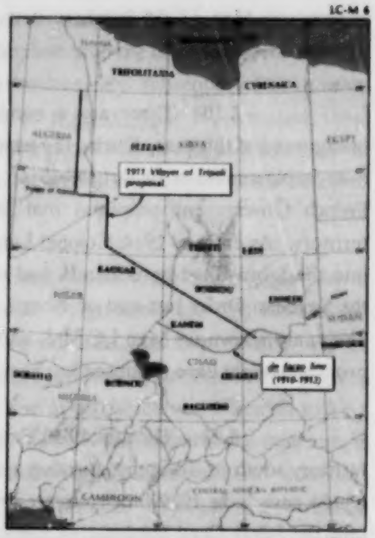
[9] This proposal could properly be regarded as involving a "cession" of territory by France since it concerned a rectification of the Franco-Italian Accord of 12 September 1919.

[10] These are discussed and depicted in the LM, starting at para. 5.251.

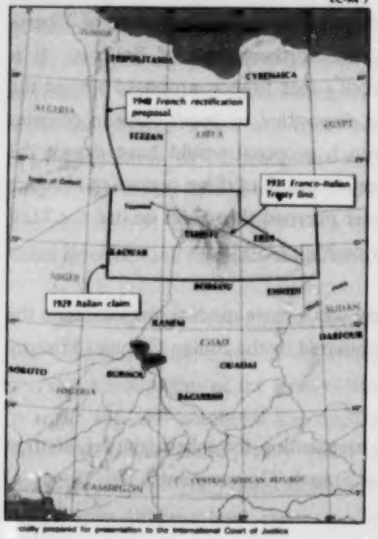
LC-M 5


TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
TIBESTI
KAOUAR
1929 Italian claim.
NIGER
BORKOU
ENNEDI
1928 Minimum Italian program.
SUDAN
DARFOUR
CHAD
OUADAI
SOKOTO
BORNOU
NIGERIA
1928 Maximum Italian program.
CENTRAL AFRICAN REPUBLIC
CAMEROON

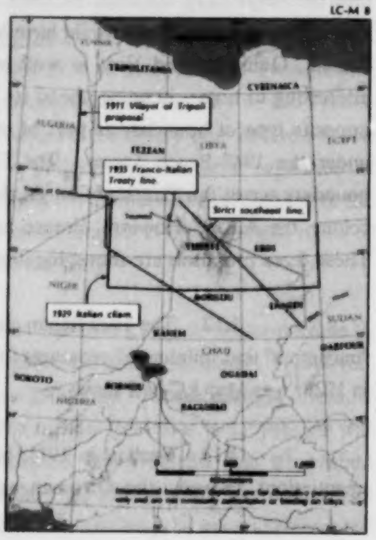
LC-M 6


TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
1911 Vilayet of Tripoli proposal
TIBESTI
ERDI
KAOUAR
BORKOU
ENNEDI
NIGER
KANEM
SUDAN
DARFOUR
CHAD
OUADAI
de facto line (1910-1912)
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
CENTRAL AFRICAN REPUBLIC

LC-M 7


TRIPOLITANIA
CYRENAICA
1948 French rectification proposal.
ALGERIA
FEZZAN
LIBYA
EGYPT
1935 Franco-Italian Treaty line
TIBESTI
ERDI
KAOUAR
NIGER
1929 Italian claim.
BORKOU
ENNEDI
SUDAN
KANEM
DARFOUR
CHAD
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
CENTRAL AFRICAN REPUBLIC

LC-M 8


TRIPOLITANIA
CYRENAICA
1911 Vilayet of Tripoli proposal
ALGERIA
FEZZAN
LIBYA
EGYPT
1935 Franco-Italian Treaty line
Strict southeast line
TIBESTI
ERDI
NIGER
BORKOU
ENNEDI
1929 Italian claim
SUDAN
KANEM
DARFOUR
CHAD
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
0
500
1,000

cially prepared for presentation to the International Court of Justice

In the meantime, a *de facto* line had come into being between the opposing French and Ottoman forces, and a similar line was envisaged in the French-Senoussi discussions. The 1911 and *de facto* lines are shown on *Map LC-M* 6.

1.14 Thus, when Laval and Mussolini sat down in 1935 to agree upon a *general settlement* of all African issues between Italy and France, including boundaries, there had been lines of all sorts formulated, proposed and even agreed - but no boundary concerning the area of the Libya-Chad borderlands had emerged from them. The special significance of the boundary line that Italy and France agreed in 1935 is that it was a settlement of that boundary by the two States directly concerned at the time, not an arrangement involving third States - and it was overwhelmingly approved by the two Parliaments of the two States, each of which passed laws authorizing its ratification. However, for reasons extraneous to the issue of boundaries, ratifications were never exchanged as called for by the 1935 Treaty. As *Map LC-M* 7 demonstrates, the 1935 line would have divided the borderlands region rather than leaving all of it north of 18°N latitude to Libya (and Italy), as in Italy's 1929 proposal, or leaving more than the entire borderlands to France, as in France's subsequent post-World War II proposal. It must be said, however, that neither Government regarded the 1935 line as a satisfactory line. France's General Tilho sharply criticised it; and at the final stage of the negotiations, the Italian Colonial Ministry tried to reduce somewhat the boundary concessions Italy was making to France by moving onto the Libyan side of the line both Bardaï and Tekro; but Mussolini barred this attempt, his eyes being focussed on Ethiopia. As the *CM* indicates, the 1935 line was a "pis-aller" for France; and it was a major territorial sacrifice for Italy, the consequence of an odious secret deal concerning Ethiopia.

1.15 For the purpose of attribution of the territory comprising the Libya-Chad borderlands, Libya submits that all these lines (and related negotiations) have some relevance and some have considerable significance. The latter category would appear to include, in varying degrees, the strict southeast line of the 1899 Declaration, the 1911 *vilayet* of Tripoli proposal, the 1929 Italian proposal and the 1935 Treaty line. These various lines are displayed on *Map LC-M* 8; they are again set out on *Map LC-M* 8A, on which the Libya-Chad

---

[11] *See*, *LM*, para. 5.114, and Maps Nos. 52/A and 52/B.

borderlands are depicted, together with Libya's claim in this case. The Court has a wealth of material concerning lines of all kinds to consider in determining title between the Parties in the area comprising the Libya-Chad borderlands, and not just one line as Chad maintains.

1.16 The narrow focus of Chad's case is strikingly illustrated by its obsession with one of the regions in dispute - Tibesti - and even more so with a small oasis in northern Tibesti known as Aouzou. The CM has entitled its first chapter "Les Données de l'Affaire de la Bande d'Aozou"[12]; the last word of the CM prior to Chad's Submissions is "Tibesti"[13]; the name "Aouzou" (spelt "Aozou" in the CM) appears on virtually every page. Why this obsession? The Court has not entitled this dispute "l'Affaire de la Bande d'Aozou"; to the contrary, in the light of the Accord-Cadre, this case is officially called Territorial Dispute (Libyan Arab Jamahiriya/Chad)[14].

1.17 Chad admits that the term "Aouzou Strip" or "la bande d'Aozou" was a journalistic invention that did not gain currency until the late 1970s[15]. As the map shows (Map LC-M 8A), Aouzou is an oasis in the northwest part of the Libya-Chad borderlands, which themselves consist of not just Tibesti but also the regions of Borkou, Ennedi, Ounianga and Erdi. The boundary line agreed between Italy and France in 1935, as part of their general settlement of African problems, would have placed Aouzou on the Italian side of the line. It was one of the minor oases in Tibesti that the French were willing to let Italy have in the 1935 boundary agreement that was so disadvantageous to Italy. The Quai d'Orsay described how relatively unimportant the effect of the 1935 boundary was on French interests in the borderlands in this deprecating way: "les centres d'habitation principaux" were all left on the French side of the line; "[e]lle donne à l'Italie une bonne palmeraie, celle d'Aouzou, et quelques points d'eau secondaires, Guezenti, Ouri et Yebbi-Souma"[16]. This may have been the first occasion for most Italians that Aouzou was brought to their attention; for it lay on the French side of a true southeast line under Article 3 of the 1899 Declaration, a

---

[12] CM, p. 16.

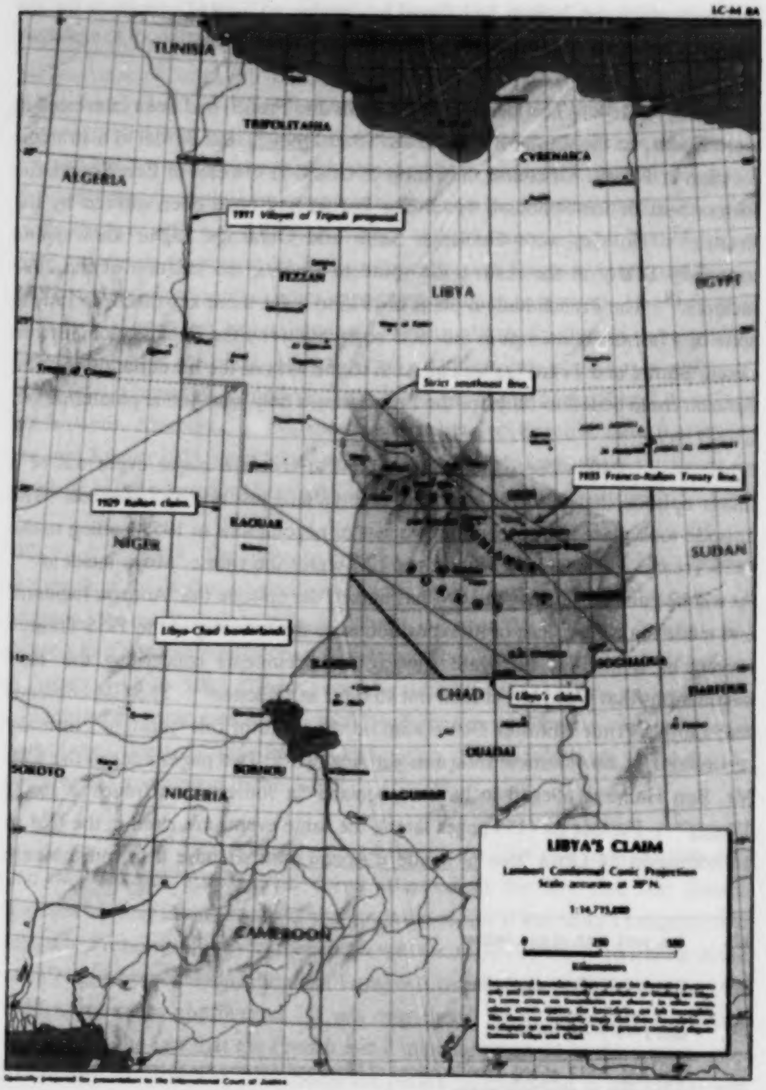
[13] CM, p. 382.

[14] Différend Térritorial (Jamahiriya Arabe Libyenne/Tchad).

[15] See, CM, p. 17, para. 1.

[16] See, para. 5.99, below.

LC-84 BA


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
1911 Vilayet of Tripoli proposal
FEZZAN
LIBYA
EGYPT
Tropic of Cancer
Sirte southeast line
1935 Franco-Italian Treaty line
1929 Italian claim
KAOUAR
NIGER
SUDAN
Libya-Chad borderlands
KANEM
CHAD
Libya's claim
DARFOUR
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
LIBYA'S CLAIM
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:14,715,000
0
250
500
Kilometers

Specially prepared for presentation to the International Court of Justice

line with which the Italians had flirted in drawing up various proposals for the southern boundary of Libya in the years following World War I.

1.18 The locations the Italians and French had been interested in were Zouar, on the southern edge of the Tibesti massif, and Bardaï at a strategic location in Tibesti. Of course they knew of Gouro to the east of Emi Koussi, the former seat of the Senoussi, which like Bardaï had once been offered by the French[17]. So also were Ounianga Kebir and Ounianga Saghir known, and especially Tekro on the main trade route to Koufra, the location of the 1934 incident[18]. The French had no plans in 1935 to leave these key places to Italy in spite of a last-ditch attempt in the 1935 negotiations by the Italian colonialists to obtain Bardaï and Tekro (as well as Afafi to the west of the borderlands)[19]. But Aouzou could be left to Italy; for the French it was only "une bonne palmeraie".

1.19 The CM has attempted to create a major event out of a minor episode that occurred at Moya, a tiny place just north of Aouzou. The episode took place in between the two sets of negotiations in 1955 leading to the 1955 Treaty, and was dealt with in the LM under the rubric "Moya incident"[20]. As will be gone into below, the CM has named the episode the "Aouzou Incident" and made it a centrepiece of its exposition as to the meaning of the 1955 Treaty - serving as a kind of surrogate travaux for documents concerning the 1955 negotiations that Chad has chosen not to offer in evidence[21]. The CM contends that Libya's Prime Minister Ben Halim, in the wake of this "incident", formally recognized "la souveraineté française sur Aozou"[22]. Two pages later in the CM, Mr. Ben Halim is alleged to have recognized "la souveraineté française sur le Tibesti"[23]. Further on (155 pages later), the same events are cited in the CM as an admission by Libya "que la bande d'Aozou était soumise à la souveraineté exclusive de la France"[24]. Quite a remarkable evolution in the territorial coverage of the alleged statement of Mr. Ben Halim!

---

[17] See, para. 5.44, et seq., below.

[18] See, para. 5.87, et seq., below.

[19] See, para. 5.100, below.

[20] See, LM, 5.512, et seq. The locations of Moya and Aouzou are shown on Map LC-M 9 referred to at para. 3.34, below.

[21] See, para. 1.44 and fn. 37, below.

[22] CM, p. 134, para. 111. Emphasis added.

[23] CM, p. 136, para. 118. Emphasis added.

1.20 Libya will demonstrate in Part III that this whole episode is misinterpreted and exaggerated in the CM; that what the Prime Minister is claimed to have said is not established in the CM by acceptable evidence; and that in the circumstances the very most that his remarks might be taken to mean - if he made them at all - was that he had been reliably informed that French troops were present in Aouzou, which had not been the case for many years, and that he was not planning to send another expedition there as rumoured. The very most he is even alleged by Chad to have said concerned only the "bonne palmeraie" of Aouzou - not the so-called "Aouzou Strip" - and certainly not the rest of Tibesti, or Borkou, Ounianga, Ennedi or Erdi, all of which are part of the Libya/Chad borderlands. Moreover, no evidence at all has been produced to show that during the July-August 1955 negotiations whatever Mr. Ben Halim is alleged to have said came up in the discussions between the Libyan and French negotiators.

1.21 The ultimate French occupation of Tibesti in 1929-1930 was the result of the Italian advances south into Fezzan and Koufra in Cyrenaica. In addition, the northwestern part of Tibesti lay near the Algerian frontier, and Algeria had been annexed as part of metropolitan France and was no longer just a colony. Until 1930, Tibesti was regarded by the French as within the administrative control of A.O.F., with headquarters at Bilma; it was not even a part of the colony of Chad. In 1930, this region of the borderlands was shifted by the French Government to the A.E.F..

1.22 By calling the area between the 1935 line and the 1899-1919 line the "Aouzou Strip", Chad draws attention to the fact that real French interests lay only in that sector of the borderlands, for it was close to Algeria, and hence to France itself. Even then, however, the region of the borderlands north of 18°N (the approximate latitude of Faya) was largely ignored by France until the 1955 negotiations approached. It was only then - when the incident at Moya brought out the fact that the French had a minimal presence in this region - that the French Government, particularly the people in command in the A.O.F. and the A.E.F., reacted strongly and sought to turn this minor episode into an event furthering French interests in the negotiations. Yet the episode at Moya, from the evidence so far produced, never played a role in the July-August 1955 negotiations, and was not brought up at all. It was some 20 years later that "Aouzou" gained currency as the name to apply to the territorial dispute between Libya and Chad. During the rebellion and civil war in Chad, the "Aouzou Strip" became a sort of political slogan. In the view of Libya it is an entirely inappropriate term to apply to the present case. Not only does it wrongly narrow the geographical focus of the dispute, which concerns the borderlands and not just the area lying between the 1935 and 1899-1919 lines, but it also imports a political element that has no bearing on the question of title to the borderlands.

---

[24] CM, p. 291, para. 324. Emphasis added.

SECTION 2. Chad's Defence of its French Colonial Past; its Ignoring of the Rights of the Indigenous Peoples

1.23 In its Memorial, Chad defends in its entirety the French colonial thesis developed over the years, even to the point of covering up or attempting to rationalize some of its more conspicuous defects. The CM tries to make out a case for the Non-Annexed Map as having really been annexed to the 1899 Declaration. It tries to disguise France's series of bévues at the U.N., and to place the blame on the U.N. Secretariat. It suppresses what must have been its astonishment (not to mention displeasure) to discover, after this case was brought, that the French Government had not considered the 1955 Treaty to be of sufficient importance to be registered under Article 102 of the U.N. Charter; and the CM fails to mention that in 1972 the U.N. Secretariat actually reminded France of its omission, but the French Government again failed to take steps to have the Treaty registered. (In contrast, the 1956 Agreement concerning Libya's frontier with Algeria was registered with alacrity under Article 102.) Perhaps most remarkable of all, the CM discloses - but without any outward display of embarrassment - that the 1900-1902 Franco-Italian Accords, on which Chad's case virtually depends, were not en vigueur at the time of Libya's independence in 1951 - nor in fact was the Franco-Italian Accord of 12 September 1919, which dealt with the western boundary of Libya with Algeria and Niger[25].

1.24 In its vigorous defence of the actions of the French Government during the colonial past, the CM neglects to consider the legal basis on which France's claimed effectivités rest. The CM totally ignores the rights of the indigenous peoples of the area, who fought valiantly under Senoussi leadership to oppose this attempted invasion of their lands by forces under French command. The borderlands were not terra nullius - and the CM does not assert otherwise - and the peoples of the region rejected any overtures to reach agreement with the French. Yet these peoples, paradoxically, are now claimed by Chad to inhabit Chadian not Libyan territory. In the face of the French threat, these Senoussi peoples welcomed into the borderlands Ottoman civil and military forces. Until 1913, a modus vivendi existed between the French and the Ottomans and between the French and the Senoussi, with a de facto separation of forces along roughly 15°N latitude (Map LC-M 6). Chad devotes not one word to the legal basis on which, starting in 1913, French forces invaded these lands, destroying the zawiyas of the peoples and uprooting their Islamic civilization and culture, and totally disrupting their economic life. The fact that, post-1920, conquest was no longer a valid means of acquiring territory is simply ignored.

---

[25] See, para. 3.11, below.

1.25 Libya's claim to title in the borderlands area reposes on the rights of these peoples and on the rights, titles and claims of the Ottoman Empire, which Italy inherited in 1912. Libya's case is solidly founded in the rights of these peoples to self-determination. It rejects the illegal acts of the French forces, which in any event were directed not at settlement, but at the protection of the only part of Chad that the French considered to be of any value - the southern part generally below 15°N latitude ("le Tchad utile"). Certainly prior to 1930, and even thereafter, these military measures of protection fell far short of the effectivités that under the law existing prior to the League Covenant might have conferred on France sovereignty over the area and its peoples.

1.26 The CM fails to address the question how, in any event, under the 1955 Treaty, Article 3 of which sets out the basis for delimiting the southern boundary of Libya, colonial effectivités could be regarded as a relevant factor. The basis on which the delimitation was to be negotiated was to be the "actes internationaux" en vigueur in 1951, and whatever international boundary emanated therefrom - in short, uti possidetis juris. Under such a criterion, colonial effectivités had no place, even if proved, and even if valid[26].

---

[26] See, para. 5.01, et seq., below.

SECTION 3. Chad's Reliance on Recognition, Acquiescence and Estoppel

1.27 There is an elegant flow to the Memorial of Chad: at first glance the case seems to hang together with style, like an expensive French dress. But after a few stretches and tugs and pulls it comes apart at the seams, held together by a few thin threads, which are arguments based on alleged recognition, acquiescence and even estoppel; and this characteristic persists with remarkable consistency throughout Chad's pleading.

1.28 The CM applies such a line of argument first against Italy. In this way it attempts to surmount the problem that the 1899 Declaration was between Great Britain and France, as was the Convention of 8 September 1919; and so far as Italy was concerned both agreements were res inter alios acta. The cornerstone of Chad's acquiescence theory is the Non-Annexed Map, which miraculously is said to have accomplished four things:

- The establishment of Libya's western boundary to Toummo and even northward from Toummo to the Tropic of Cancer;
- The abandonment and even renunciation of any Ottoman claim by Italy over the Tripolitanian hinterland;
- Recognition and acceptance in the 1900-1902 Accords of the 1899 Declaration's southeast line as shown on the Non-Annexed Map (which was more east-southeast than southeast, as the British observed at the time); and
- By a considerable feat of logical leap-frog, the acceptance by Italy of the 1919 line which, as a result of the 1900-1902 Accords, it was estopped from opposing.

Thus, mirabile dictu, the principle of res inter alios acta is disposed of, without even addressing how Italy in 1900-1902 could have agreed or settled any boundary rights in respect to territory that was at the time under Ottoman sovereignty. As for the Non-Annexed Map, this in reality is claimed by Chad to have become annexed for all practical purposes since it was, the CM maintains, acquiesced in or recognized by Great Britain - which must have known about it and had raised no objection. Of course, as will be seen below, a few pieces of evidence overlooked by the CM make short shrift of this argument.

1.29 The CM maintains that Libya inherited all of the results of this claimed recognition, acquiescence and estoppel attributed to Italy. But there is no discussion by Chad of the legal basis for such a conclusion. Unless a conventional boundary came about as a result of such conduct, a fair reading of the 1955 Treaty is that Libya agreed only to examine the "actes internationaux" en vigueur in 1951, unencumbered by the political and legal machinations of French or Italian Government officials, who had been jockeying for position in the boundary negotiations between them lasting from 1919 until their culmination in the 1935 Treaty.

1.30 Then the CM seeks to apply these principles to Libya - although not quite daring to assert that Libya is estopped from presenting its case to the Court because it failed to do so to the Security Council. It requires a detailed examination of the CM in this respect to expose all of its flaws. This will be done in the course of this pleading. But it is necessary to mention here that Chad fails to apply this standard to the conduct of itself or of France. To pick just one example, Chad argues that Libya was obliged to deploy before the Security Council its legal case concerning the frontier in the way Chad did in 1978 and in 1983. But the CM cites no authority for such a proposition. In Chad's presentation to the U.N. a number of serious mistakes were made, illustrating the undesirability of a premature exposition of a legal case:

- Chad referred to a map annexed to the 1899 Declaration - when it should have known that there was no such map.
- Chad invoked the 1955 Treaty - when it should have known that it had not been registered under Article 102 of the U.N. Charter.
- Chad referred to the 1900-1902 Accords and the Accord of 12 September 1919 as en vigueur in 1951 - when it should have known they were not.

Furthermore, the case Chad advances today is materially different from the one it presented at the U.N.

1.31 Libya believes it adopted the wiser course: to abstain from discussing a very complex legal question, which is now in the process of being unravelled before the appropriate international tribunal, the Court, instead of taking the risk of making erroneous statements the way Chad did, which under Chad's estoppel theory should now act to bar Chad.

SECTION 4. Major Changes in the Case Presented by Chad to the U.N.: the Three Different Theories Now Advanced by Chad

1.32 In spite of the detailed presentation to the U.N. by Chad of its case concerning the Libya-Chad boundary, this case has been extensively modified in the CM. Libya does not question Chad's right to do so; but it does question how the CM could with any consistency criticize Libya's conduct in not spelling out its case when Chad itself has substantially modified its own widely-publicized case.

1.33 Until these proceedings, Chad's case had always reposed on the 1955 Treaty; and its theory seemed relatively simple, albeit incorrect and not fully thought through. It was that, in Article 3 of the 1955 Treaty, Libya and France carried out the recommendations of G.A. Resolution 392(V), fixing the boundary by reference to certain "actes internationaux" en vigueur in 1951; and by not mentioning the 1935 Treaty in Annex I to the Treaty, the parties specifically rejected the 1935 line. The second point was paramount, since Chad (as France had before) at least publicly believed that the "actes internationaux" listed in Annex I did delimit a boundary; and, hence, the absence of the 1935 Treaty from the list was of critical importance.

1.34 A full analysis of the 1955 Treaty will be undertaken further on; but it emerges from the CM that Chad has replaced this rather simplistic theory with a complex composite of three theories that, properly viewed, are quite separate and different, although each purports to lead to the exact same boundary line[27]. No doubt when Chad looked below the surface of the French thesis about Libya's southern boundary, which it felt obliged to defend, it found some unpleasant surprises that required some intricate legal footwork in order to deal with them. One such surprise - the fact that the 1955 Treaty had not been registered under Article 102 of the U.N. Charter - undoubtedly was an embarrassing, though remediable, defect. Of course, France's casual treatment of that Treaty is significant in itself. A second surprise - the fact that the 1900-1902 Accords were not en vigueur in 1951 - was a potentially disastrous revelation. The 1902 Accord and the famous map - the 1899 Livre jaune map now to be called the Non-Annexed Map - were critical to the French thesis espoused by Chad before the U.N. In addition, certain key "actes internationaux" had not been included in Annex I, such as the 1900 Accord and 1924 Protocol and Declaration (to which Chad's Application of 3 September 1990 made reference), and the Franco-Italian Accord of 28 October 1912, which the CM reveals to be an important element of Chad's case[28].

---

[27] The three theories of Chad are succinctly set forth in the CM's conclusions, appearing at pp. 375-376.

1.35 This new three-pronged approach of Chad is in effect the presentation of three separate, alternative pleadings, for each theory is independent of the others and stands on its own feet. Such an approach necessarily carries with it the implication that Chad does not have sufficient confidence in any one theory to rely entirely upon it. But it should be observed that advancing three theories does not thereby strengthen Chad's case, for none of the theories supports the others. In fact, there are inconsistencies between them. At the end of the day, Chad's case depends on putting forward one theory that carries conviction. Chad has failed to do this in its Memorial. Furthermore, none of these three different theories is the same as the single theory that Chad advanced in its presentations concerning the boundary issue before the U.N. in 1978 and 1983.

1.36 The first of Chad's three theories for arriving at the precise line is clearly an attempt to remedy the defects just mentioned. Under the first theory, Article 3 of the 1955 Treaty by renvoi in Annex I to the 1899 boundary line, shown on the Non-Annexed Map, and referred to in the 1902 Accord (alleged to be the same line subsequently described in words in the 1919 Convention), expressed the agreement of Libya and France to this exact line (terminating at 24°E longitude - 19°30'N latitude) as a boundary line, whatever the status of the underlying agreements may have been. This is a fundamental change in the French-Chadian case as heretofore publicly expressed. It clearly reflects an attempt to overcome the formidable defects in the French thesis that Chad has heretofore put forward as its own.

---

[28] See, CM, p. 182, para. 151; see, also, LM, para. 5.117, et seq. and para. 4.150, et seq., below. A list of 11 agreements omitted from the Annex I list appears at para. 4.09, below.

1.37 Then the CM advances an alternative route to the exact same line: this is Chad's second theory. It resembles Chad's earlier case, but with the addition of a significant new feature: the concept that the 1899 line, conceded to relate only to zones of influence at the time, became transformed into a boundary line as a result of French effectivités starting in 1913 and taking effect well before 1919. This second theory is complex. It is a bit like a circus trapeze act, with four sets of swings and four artists tumbling through the air and catching each other. If one part goes wrong the whole act plunges to the net - and in this case there really is no net. This complex alternative submission of Chad will be examined in detail below. Many of its components have already been dealt with in the LM; and the flaws in the new component based on French effectivités and their supposed effect in transforming the 1899 zone of influence into a boundary line by 1919 will be exposed further on in this Counter-Memorial.

1.38 Finally, Chad has advanced a third theory of its case - that once more leads to the exact same line. This is based solely on French effectivités prior to 1919. It, too, is a theory not heretofore advanced by either France or Chad. As will be shown, it is ruled out by the terms of Article 3 of the 1955 Treaty, is invalid in law, and is not supported by the facts and evidence.

1.39 Such an evolution in Chad's case is understandable. It shows that a case of this kind cannot properly be presented before a political forum such as the U.N. General Assembly or the Security Council or the O.A.U. as a statement of a "political" position and without having done the prior legal research. It also shows how wide of the mark are the suggestions in the CM that in the 1955 negotiations the Libyan team had a firm grasp of the various agreements referred to in Annex I and of the boundary line to which Chad now claims they inevitably led. Libya has only recently discovered after reading the Memorial of Chad that neither the Accord of 12 September 1919 nor the 1900-1902 Accords were en vigueur in 1951, one of a number of key facts not disclosed at the time by the French negotiators. Thus, Annex I contained a fundamental mistake consisting of the fact that these agreements were listed as having been en vigueur in 1951, when they were not[29]. The French travaux that may bear on this question, which concern the second part of the 1955 negotiations (in July and August), have been very sparingly offered in evidence by Chad.

---

[29] Had France believed at the time that listing these agreements in Annex I would remedy the problem of their not being en vigueur, the French Government should surely have made certain that the 1955 Treaty was registered under Article 102 of the U.N. Charter, which it failed to do.

SECTION 5. Significant Gaps and Failures of Proof in Chad's Case

1.40 There are notable gaps and omissions in Chad's case as set out in the CM. The lack of French travaux covering the July-August 1955 negotiations has just been mentioned. This contrasts sharply with what appear to be the rather complete travaux submitted for the first phase of the negotiations, in January 1955 in Paris. But it is the second period that is the more significant in terms of the intent of Libya and France as expressed in Article 3. For the CM has revealed that the list of "actes internationaux" set out in Annex I was added to the draft Treaty only in the final days, just prior to signature. Yet Chad omits the travaux that might explain why.

1.41 In fact, Chad's Memorial seems evasive in its attempt to explain the reasons why this list of "actes internationaux" was added at the last minute. For example, the CM suggests this answer:

> "C'est probablement à la suite de cet incident[30] et pour que les choses soient tout à fait claires que les négociateurs décidèrent de préciser, avec un certain luxe de détails, le tracé de la frontière dans l'échange de lettres annexé au Traité de 1955[31]."

Must a key fact like this be left to speculation? Are there no French travaux that directly bear on the intent of the negotiators? The CM asserts that the "liste des actes" in Annex I was "dressée avec soin comme en témoigne la correspondance diplomatique échangée entre les Parties"[32]. But where and what is this alleged diplomatic exchange? It is not cited; it is not annexed; and Libya has no knowledge of any such exchange. Then this explanation is offered in the CM:

> "Il semble évident que, dans la phase ultime de la négociation, les négociateurs français estimèrent nécessaire de 'mettre les points sur les i' et de substituer à une vague référence générale aux actes internationaux en vigueur, une énumération limitative des traités

---

[30] Referring to the Aouzou "incident" of 28 February 1955 (referred to in the CM as the "Moya incident"). See, LM, para. 5.512, et seq.

[31] CM, p. 31, para. 66.

[32] CM, p. 123, para. 82.

fixant la ligne frontière afin d'écarter toute ambiguïté sur la frontière du Tibesti[33]."

1.42 This incomplete, unconvincing explanation diverts attention from certain critical defects in the French-Chadian thesis as to the significance of Annex I. It was by no means prepared "avec soin"; the Annex is full of mistakes and omissions. Annex I lists two agreements that were *not* "en vigueur" in 1951: the 1902 Accord and the Accord of 12 September 1919. It fails to list a number of other agreements that were directly pertinent, among which were the 1900 Accord, the 1924 Protocol and Declaration, and the Franco-Italian agreement of 28 October 1912[34]. There is every indication that the Annex I list of "actes internationaux" may have been rushed in at the last moment of the negotiations to try to remedy a fatal defect just then realized by the French side: two of the key agreements were not *en vigueur*, a disclosure not communicated to the Libyan side; and a reference to them in the Annex was presumably thought to confer on them a validity they otherwise lacked[35]. So that rather than containing a certain "luxe de détails", as the *CM* off-handedly suggests, Annex I reflects a certain "luxe de fourberies"; and the Chad Memorial does nothing to set the record straight.

1.43 There are other major gaps and omissions in the facts presented by Chad's Memorial, facts that are directly relevant to the question whether there is a conventional boundary east of Toummo, which Chad bears the burden of proving. Examples of some of these gaps are the following:

- The *travaux* referred to in the *CM* concerning the 1899 Declaration omitted a number of key documents, which has led to several serious errors in the analysis set out in the *CM*;

- Chad failed to furnish a document to be found in the British Archives that demonstrates that the British Government at the time did not regard the line placed by the French Government on the *Non-Annexed Map* as faithfully reflecting the agreed line, which was intended to follow a true southeast direction[36];

---

[33] *CM*, p. 137, para. 121. Note here again the emphasis on Tibesti. *See*, para. 1.16, *et seq.*, above.

[34] For a more complete list of omissions, *see*, para. 4.09, below.

[35] But, *see*, fn. 29, above.

- The CM overlooks the Anglo-Italian Accord of 1902, entered into prior to the 1902 Franco-Italian Accord, which bears directly on the meaning of the later agreement;

- The facts alleged to support French effectivités prior to 1919 in the borderlands region fall well short of such a demonstration;

- The CM omits a large number of important events occurring between 1919 and 1934 relating to Italy's protest against the 1919 Convention and concerning the on-going negotiations between Italy and France to fix Libya's southern boundary;

- The CM fails to refer to or to annex the Exposé des motifs accompanying the draft law to authorize ratification of the 1935 Treaty, in which the French Government informed the French Parliament that east of Toummo there was no conventional boundary;

- Only the briefest reference is made in the CM to the various agreements entered into between Libya and Chad in the 1970s and 1980s - the 1972 Libya-Chad Agreement of Friendship and Cooperation, the 1974 Protocole d'Accord, the 1980 Treaty of Amity and Alliance, and the 1981 "Accord de fusion", conduct of the Parties that was not consistent with Chad's accusation that Libya had invaded and occupied the territory of Chad but that was in keeping with the actual situation, namely, that a boundary between Libya and Chad had yet to be delimited.

1.44 Related to the matter of evidence produced by Chad is the fact that the documents comprising the "Productions", furnished by Chad to the Court in one copy, only became available for copying by Libya, at its expense, some two months after the Memorials were filed. The Registrar has since acted to require Chad to submit this evidence in the appropriate manner, although Libya still has been furnished only one copy[37]. Libya has clearly been disadvantaged by this, as well as by the tardy submission of certain required translations. Thus, Libya must reserve all its rights in regard to these procedural failures. In spite of these difficulties, Libya has done its best to address fully the evidence presented by Chad and the contentions advanced in Chad's Memorial; however, Libya's failure to have dealt with a particular fact or contention does not imply its admission of that fact or its agreement with that contention.

---

[36] See, LM, para. 5.98; see, also, para. 4.60, below.

CHAPTER II. STABILITY OF AFRICAN FRONTIERS

1.45 It is asserted at the beginning and at the end of Chad's Memorial that a decision by the Court, other than to affirm Chad's position as to the exact boundary line alleged to divide the territories of Libya and Chad, would threaten the stability of all other African frontiers that owe their origin to the agreements relevant to the present case entered into during colonial times. It is put this way in the final paragraph of the CM:

> "Si la Cour, revenant sur le principe de l'uti possidetis, venait à décider en faveur d'une ligne différente que celle défendue par la République du Tchad et fondée sur les accords de 1899, 1902, 1919 et confirmée en 1955, elle menacerait la stabilité de l'ensemble des frontières trouvant leur origine dans les accords conclus entre puissances coloniales et, dans les meilleurs cas, ultérieurement acceptées par les Etats successeurs. La confirmation de la frontière tchado-libyenne sur le fondement du Traité de 1955 a une importance qui va bien au-delà des collines du Tibesti[38]."

---

[37] On 20 Feb. 1992, Chad resubmitted many of these Productions as additional annexes. The lateness of this submission, just a month before Counter-Memorials are to be filed, has prevented Libya from referring to these documents in its Counter-Memorial or even studying them. On 10 March 1992, Libya received yet another communication from the Registrar indicating that an additional annex was being sent. As of 19 March 1992, Libya had received none of these additional annexes. Libya reserves the right to comment on these documents at a later stage after it has examined them. Exhibit LC-M 1 hereto contains all the correspondence of the Registrar relating to this problem with Chad's evidence. In addition, Libya has written to the French Government requesting equal access with Chad to the various files and archives containing documents bearing on the present dispute. A copy of Libya's note verbale is annexed as Exhibit LC-M 2. A reply dated 18 March 1992 from the French Government has just been received, too late to be included in Exhibit LC-M 2. Therefore, a copy has been furnished to the Registry.

[38] CM, p. 382, para. 29.

1.46 What Chad seems to be saying is this: that the Court has no choice but to approve Chad's line because other boundary lines in Africa are even less supportable; and that it is too dangerous to peer beneath the surface and determine whether or not in fact a conventional boundary does exist in the present case since other boundaries may be even more suspect and vulnerable. This is tantamount to turning the doctrine of estoppel against the Court itself.

1.47 Chad's Memorial brandishes the threat that to question Chad's line would be to place in serious doubt Libya's boundaries with Tunisia, Algeria and Niger, because all these frontiers:

> "... ont, tout comme celles du Tchad, été fixée[s] par le Traité franco-libyen du 10 août 1955 dans lequel la partie libyenne se refuse à voir un accord de délimitation définitive ... [39]."

This assertion is permeated with inaccuracy. The Libya-Tunisia boundary was not fixed by the 1955 Treaty; it owes its origin to the 1910 Treaty between France and the Ottoman Empire. Libya's western frontier as far south as Toummo was fixed by the Franco-Italian Accord of 12 September 1919; and Annex I of the 1955 Treaty brought about a rectification of that boundary between Ghat and Toummo. In addition, in the 1956 Agreement between Libya and France, the sector of the Algerian boundary between Ghadamès and Ghat, fixed in 1919, was rectified. None of the boundary lying between Libya and Algeria will be affected by the outcome of the present case.

1.48 If there are questions concerning Libya's boundary with Niger, they stem not from the 1955 Treaty, but from the fact that no conventional boundary east of Toummo was in existence at the time of Libya's independence; and the 1955 Treaty did not alter that situation. Should the Court uphold this view and accede to Libya's submissions, there may have to be consequential negotiations between Libya and Niger to determine the course of the boundary between the two States, from Toummo eastwards and then southwards to the intersection of the eastern boundary of Niger and 18°N latitude. In this context, it is noteworthy that, at present, there is no conventional boundary between Niger and Chad.

---

[39] CM, p. 13, para. 11. This is a reference to Libya's statement in its notification of 31 August 1990 of the Accord-Cadre, in which Libya stated that the Libya-Chad boundary had yet to be delimited.

1.49 Libya rejects the general line of argument of Chad based on a perceived threat to stability. The Accord-Cadre was not an agreement to go to the Court to "rubber stamp" the French-Chadian thesis as to a conventional boundary. It was to ask the Court to resolve this territorial dispute applying principles of international law. The greatest promise of stability in the region in respect to boundaries between African States is the willingness of States like Libya and Chad to take such a dispute to the Court for resolution in accordance with international law and to agree to abide by the Court's judgment - whatever it may be.

1.50 Libya maintains that what could be threatening to stability in the region is if Chad attempts to back away from its agreement to submit this dispute to the Court for resolution by accepting to abide by a judgment only if it accords one hundred percent with Chad's position as to a boundary line. What is potentially destabilizing is Chad's attempt to defend the colonial past and the French boundary thesis, without questioning its validity; and without considering the rights of the indigenous peoples to whose lands France claimed title. Chad appears to give the benefit of the doubt to the French claim as a matter of blind faith.

1.51 As was brought out in its Memorial, Libya did not emerge as a colonial territory being granted independence anew. It was not part of the U.N. decolonization program in 1960. Its peoples regained their independence in 1951, and these peoples included the indigenous peoples of the borderlands who had fought so hard to keep the French from invading their lands - just as they fought the Italians in the north. Libya's case relies in large part on the self-determination of these peoples; not to change an established boundary - for there was none - but to support the identification for the first time of a boundary between Libya and Chad.

1.52 There is no merit in the assertion that the security of other States in Africa or in the region is threatened by Libya's claim. Libya's willingness to have this territorial dispute settled by the Court - with no strings attached - is a stabilizing influence. This is the third boundary case Libya has taken to the Court; and it urges other African States to follow its example. The cause of any instability would be Chad's attempt to retain what it contends were the fruits of French colonial conquest of the borderlands, without questioning the French claim to legal rights and titles, and without even considering the rights and titles of the indigenous peoples, whom they now claim to be Chadian, or their right to self-determination[40].

1.53 The principle of stability can hardly be applied to a boundary that has never been established, as here. Stability is the basic aim of every territorial delimitation, whether achieved by direct negotiations or by judicial or arbitral settlement. In itself, the principle furnishes no method for settling a territorial dispute; it provides no solution. The stability principle becomes applicable only when the delimitation has occurred. Thus, Libya's claim does not conflict with the O.A.U. Charter, or with the 1964 Cairo Declaration; and it affirms the principle of uti possidetis juris as applied on the date of Libya's independence - the agreed basis of delimitation with France set out in Article 3 of the 1955 Treaty. Similarly, there is no conflict between Libya's claim and the U.N. Charter or resolutions of the General Assembly. In its willingness to have this territorial dispute settled in accordance with the principles and rules of international law, including the right of self-determination of peoples, Libya's claim is in full accord with these instruments.

CHAPTER III. THE CRITICAL DATE IN THIS CASE

1.54 It appears that the Parties are in agreement that there is a critical date in this case - the date of Libya's independence on 24 December 1951. Although the CM refers to a number of "dates cruciales" in the history of the dispute[41], it recognizes the date of Libya's independence as the critical date in terms of determining the southern frontier of Libya:

> "Lorsque la Libye devint un Etat indépendant, elle le fut dans le cadre de ses frontières telles qu'elles existaient au moment de son accession à l'indépendance, le 24 décembre 1951[42]."

---

[40] In this regard, see, para. 5.113 (last item), below, and the Petition of the Tibesti Tribes dated 3 November 1991, Exhibit LC-M 3, which concerns an expression of affiliation with Libya by the inhabitants of Tibesti in a Resolution adopted by 4,000 members of the local tribes on 11 March 1991. Even the French Government in advancing in 1948 its boundary rectification proposal expressed concern that the nomad tribes along Libya's frontier with Algeria be linked with their brethren in the north rather than be left to Chad. See, CM, pp. 125-126, para. 92.

[41] CM, p. 43, para. 123.

[42] CM, pp. 88-89, para. 138.

The date of Chad's independence is cited by the *CM* as having the same significance for Chad. Thus, on independence, Chad inherited the boundary position of France vis-à-vis Libya; and that position was defined at the moment of Libya's independence, unless subsequently modified prior to Chad's independence. On this point, the Parties appear to agree.

1.55 The 1955 Treaty between Libya and France confirmed the boundary *status quo* as of the critical date of Libya's independence in 1951. Article 3 of the Treaty provided that Libya and France:

> "... reconnaissent que les frontières séparant les territoires [of Tunisia, Algeria, A.O.F. and A.E.F. from that of Libya] sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye ...[43]."

The *CM* cites the 1955 *travaux* to confirm that Libya and France during the first phase of negotiations in Paris in January 1955 accepted as the delimitation "technique" the reference to former agreements "en vigueur à la date de la création de l'Etat libyen", and agreed to abide by the "stipulations générales" of the texts[44].

1.56 In consequence, the evidence of the Parties' conduct after that date is of diminished relevance, unless of course the Parties entered into an agreement to modify the situation as to the boundary as it existed in 1951. In 1955, France and Libya confirmed the *status quo* as of 1951, and only agreed to modify parts of Libya's frontier *west* of Toummo. Libya and Chad have never entered into an agreement establishing their common frontier east of Toummo. The Parties' conduct after 1951, therefore, can only operate to confirm or deny the position as it existed in 1951.

CHAPTER IV. STRUCTURE AND GENERAL CONTENTS OF THE COUNTER-MEMORIAL

1.57 Libya's Counter-Memorial is in two volumes. Volume I contains the text of the Counter-Memorial (Parts I-IX) and Libya's Submissions. Volume II consists of the Exhibits.

---

[43] *CM*, p. 115, para. 56.

[44] *CM*, pp. 116-117, para. 57, and Annex 250.

1.58 Following this introduction (Part I), Part II takes up the task of the Court. Parts III, IV and V then deal with Chad's failure to demonstrate or prove the existence of a conventional boundary. Part VI is devoted to the relevance and importance of the 1935 Treaty to the present case.

1.59 Parts VII and VIII then address two subjects that have a special bearing on the case. The first - the subject of good faith in the law of treaties - emerges from the background of this dispute, and is dealt with in Part VII. The second subject, dealt with in Part VIII, concerns the factors of recognition, acquiescence and estoppel in Chad's case and Chad's theory of "consolidation" of the boundary between Libya and Chad that relies on these factors.

1.60 The Counter-Memorial then turns, in Part IX, to the process of determining the boundary in the present case in the absence of a conventional boundary. It develops further the points made preliminarily in Part II, which concerns the task of the Court primarily in its jurisdictional aspects. There it is demonstrated that the process fits readily within the traditional judicial function of courts and legal tribunals and involves the kinds of findings and judgments that courts traditionally have made, notably the International Court of Justice. In discussing this process, Libya will further spell out the evidence and criteria it believes relevant to determining a boundary in this case and that support Libya's claim as set out in its Memorial.

1.61 There is one final matter to mention concerning the contents of Libya's Counter-Memorial, and indeed its approach to the case. Unlike Chad, Libya avoided presenting its case before such political forums as the U.N. or the O.A.U. For Libya considers this territorial dispute to be one for resolution in accordance with the principles and rules of international law. A fortiori, in the presentation of their respective cases to the Court, which is not a political forum, Libya feels it to be entirely out of place for the Parties to set forth arguments and material of a political character. Some portions of Chad's Memorial are, in this respect, offensive to Libya. It is earnestly hoped that both Libya and Chad can address this dispute before the Court as an entirely legal case and leave to one side the political aspects, which can only lead to acrimonious exchanges.

1.62 Libya's Counter-Memorial (Volume I) ends with Libya's Submissions, which remain unchanged.

PART II
THE TASK OF THE COURT

CHAPTER I. THE TERMS OF THE SPECIAL AGREEMENT

2.01 As Libya's Memorial pointed out, it was apparent from the papers filed at the outset of this case that the Parties perceived the dispute differently both as to its origin and its territorial extent. Chad's Memorial has now brought out the basic differences that exist between them as to the Court's task in this case.

2.02 Chapter I of the CM calls this case "l'affaire de la bande d'Aozou", admitting that this was a journalistic phrase that appeared in the late 1970s[1]. But the Accord-Cadre uses no such term; it consistently refers to the "différend territorial" (territorial dispute) between Libya and Chad. The term "territorial dispute" is used in the title and twice in the preamble of the Accord-Cadre. Article 1 states that the two Parties:

> "... undertake to settle first their territorial dispute by all political means ...[2]."

Article 2 provides that:

> "In the absence of a political settlement of their territorial dispute, the two Parties undertake:
>
> (a) to submit the dispute to the International Court of Justice."

Paragraph (b) of that same Article refers to the "disputed region" - not to the "Aouzou strip"; and paragraph (d) provides that the Parties undertake:

> "(d) to observe the said concomitant measures [mentioned in (b) and (c)] until the International Court of Justice hands down a final judgment on the territorial dispute."

---

[1] CM, p. 17, para. 1.

[2] Emphasis added. The English text cited here is based on the translation of the Accord-Cadre by the Registry. The French and English texts may be found at LM, International Accords and Agreements Annex, No. 39.

2.03 It is understandable that Chad initially conceived of this territorial dispute as being confined to the region lying between the line it maintains is a conventional boundary line and the 1935 Treaty line. The extensive discussion of the 1935 Treaty in the CM reveals that Chad had regarded the boundary line agreed in the 1935 Treaty to be the main threat to its claimed boundary line. Chad may have anticipated that Libya's case would rely on the 1935 Treaty. And certainly both Parties in their Memorials have acknowledged the relevance of the 1935 Treaty to this case; but though they are in accord on a number of points concerning the Treaty, they reach diametrically opposed conclusions as to the meaning to be drawn from it as regards the existence of a conventional boundary.

2.04 Libya's Memorial explains carefully why there is no conventional boundary between Libya and Chad in Libya's view. This point had already been made in Libya's Notification of the Accord-Cadre on 31 August 1990. However, such a boundary was agreed in 1935 between the two Powers directly concerned, Italy and France. That boundary never became a conventional boundary under international law because, for reasons extraneous to the boundary question, ratifications of the 1935 Treaty were never exchanged. Thus, the territorial dispute between the Parties does not concern a choice between two boundary lines: there are no boundary lines between Libya and Chad. Had the Accord-Cadre intended the dispute submitted to the Court to be narrowly considered in the way Chad suggests it would have contained a term other than "territorial dispute" - such as "boundary dispute" or "boundary line" or even "choice between line x and line y". The dispute here is over title to territory. Chad may believe that title has been determined by international agreement; and certainly this is the initial question the Court has to resolve. But if Chad is wrong - as Libya believes it has already demonstrated in its Memorial - the dispute has not vanished. To resolve it then will involve the attribution of territory between Libya and Chad in accordance with the applicable principles and rules of international law, a task which the Court is eminently equipped to perform. The Accord-Cadre places no restrictions on the Court in carrying out this task.

2.05 It should be noted that Libya's position that there is no existing conventional boundary between Libya and Chad is neither surprising nor unusual: international tribunals have observed on a number of occasions that the existence of a State does not carry with it the implication that all of its boundaries must necessarily have been delimited. This Court, for example, in an obiter dictum that is often cited, has affirmed that:

> "There is ... no rule that the land frontiers of a State must be fully delimited and defined, and often in various places and for long periods they are not, as is shown in the case of the entry of Albania into the League of Nations[3]."

2.06 In this passage the Court cited as precedent the opinion of the Permanent Court in the Monastery of Saint-Naoum case, where it was held that Albania had been admitted as a Member of the League of Nations in 1920 at a time when its boundaries were not entirely fixed, as the resolution of admission explicitly recognized[4]. In the Court's Advisory Opinion, it was recalled that the Member States subsequently, by unanimous vote on 1 October 1921, decided to leave the task of delimiting the Albanian boundaries to the "Principal Powers", who took action at once but without succeeding in completing the operation. In fact, even after the decision of the "Powers", in the region of the Monastery of Saint-Naoum, the boundary, according to the Court, "had been left unsettled".

2.07 Lastly, there is an important third precedent: the decision of the Mixed German-Polish Arbitration Tribunal of 1 August 1929 in Deutsche Continental Gas Gesellschaft v. Etat polonais[5]. There the tribunal said that:

> "... quelle que soit l'importance de la délimitation des frontières, on ne saurait aller jusqu'à soutenir qu'aussi longtemps que cette délimitation n'a pas été arrêtée juridiquement l'Etat en cause ne peut être considéré comme ayant un territoire quelconque. Ici, également, la pratique du droit international et les précédents historiques démontrent le contraire. Pour qu'un Etat existe et puisse être reconnu comme tel avec un territoire sans lequel il ne pourrait, ni exister, ni être reconnu, il suffit que ce territoire ait une consistance suffisamment certaine (alors même que les frontières n'en seraient pas encore exactement délimitées) et que, sur ce territoire, il exerce en réalité la puissance publique nationale de façon indépendante. Nombreux sont les exemples de cas dans lesquels des Etats ont existé sans contestation, ont été reconnus et se sont reconnus mutuellement à une époque où la frontière entre eux n'était pas encore exactement fixée."

---

[3] North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 33, para. 46.

[4] Monastery of Saint-Naoum, Advisory Opinion, 1924, P.C.I.J., Series B, No. 9.

[5] Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, Band II, N° 1/2, Teil 2, p. 23 et seq.

2.08 Thus, it is perfectly possible, as the international jurisprudence demonstrates, for a situation to exist where no boundary between two States has been legally determined by means of treaty or otherwise. This is precisely the situation before the Court in the present case since, as Libya has extensively shown, at no time during the course of history has a boundary in the borderlands been definitively settled so that it became binding on the States concerned. Such a boundary, therefore, is to be delimited today for the first time. In contrast to the Court's Advisory Opinion in Monastery of Saint-Naoum, the task of fixing this boundary has not been conferred on other States (there the "Principal Powers"); in the present case, the Parties have agreed to entrust the Court with this task, to be carried out in accordance with international law.

2.09 The CM devotes no attention to the text of the Accord-Cadre in the course of discussing the Court's intended role. Rather it makes this sort of unsupported assertion:

> "Alors que l'accord-cadre de 1989 parle d'un 'différend territorial', il est clair, selon ses propres termes, qu'il s'agit d'un différend sur les limites, c'est-à-dire d'un différend de frontière. La requête de la République du Tchad, d'après ses termes mêmes, vise à la détermination du tracé de la frontière[6]."

The CM goes on to observe, incorrectly, that the Accord-Cadre makes no reference to a disputed zone or region[7]. But Article 2(b), quoted from above, does precisely that: it refers to the "région litigieuse" (disputed region). Of course, at the end of the day, the Court will have to indicate the "limites" between Libya and Chad; but that does not mean that the territorial dispute referred to the Court is necessarily over boundary lines. For if there are no conventional boundary lines then the question becomes one of attribution of territory, of determining which State has title to which parts of the Libya-Chad borderlands. Otherwise, the Parties are faced with a non liquet.

2.10 The CM just sweeps past this fundamental point:

> "La Cour est priée de déterminer la frontière internationale qui, à son tour, précisera les limites de leurs territoires respectifs[8]."

---

[6] CM, p. 47, para. 4.

[7] CM, p. 47, para. 6.

[8] CM, p. 47, para. 7.

Such remarks fail to address the question of what the Court is to do if it finds no conventional international boundary to exist - as surely is the case here. Apparently, for Chad such a possibility is unthinkable. The task of the Court, according to Chad, cannot envisage such a situation:

> "Le rôle de la Cour n'est pas déterminer jusqu'à quel point la souveraineté sur les territoires en cause a été exercée par chaque Partie puis de tracer, de novo, une ligne qui ne tient pas compte des instruments existants ayant identifié la frontière[9]."

Of course, the Court must consider initially whether existing agreements have identified a boundary in the sense of having fixed a boundary by agreement; but the CM does not address the question of what the Court is to do if no such boundary has been fixed. It merely asserts that a "différend territorial suppose un choix entre différentes lignes préexistantes"[10].

2.11 In its discussion of the law in Chapter II, Section 1, the CM similarly avoids facing up to the real question involved in the case as to the Court's task. It dips into the jurisprudence and doctrine relating to delimitation and attribution of territory, and it attempts to equate the role the Court would be playing if it were to become involved in the attribution of territory to that of amiable compositeur acting ex aequo et bono. None of its citations to authority support such a conclusion. As the next Chapter will demonstrate, such a conclusion is wrong.

2.12 Chad's emphasis on delimitation seems designed to evade any discussion of the title claimed by France and now by Chad. The issue of title cannot be evaded by assuming that the only issue is delimitation - a choice between one line or another. Chad has the burden to prove it has valid title based on a conventional boundary, which it alleges to exist. If no such boundary exists, Chad - just like Libya - has the burden to establish its title to part or all of the borderlands. The Libyan Memorial attempted to do just that; Chad's Memorial seeks to by-pass the question by telling the Court it has only one task to perform: to choose between the line claimed by Chad to be a boundary, based on the 1899 - 1902 - 1919 agreements, and the 1935 Treaty line.

---

[9] CM, p. 52, para. 25.

[10] CM, p. 51, para. 20.

2.13 The CM does not go so far as to deny that the Court has the compétence to settle the territorial dispute referred to it if the Court finds that neither Chad's line nor the 1935 line constitutes a conventional international boundary binding on Libya and Chad. But it comes close to that, first in threatening that if the Court does not accept the 1899 - 1902 - 1919 line, the stability of the region will be disturbed and severe doubt will be cast on all other frontiers in the area; secondly, in suggesting that the Court would be acting ex aequo et bono if it went beyond a simple choice between that line and the 1935 line in determining the boundary between the Parties. Furthermore, the Submissions of Chad consist of a description of the one line that Chad claims is the conventional boundary[11].

2.14 Libya considers that the Court has full jurisdiction and compétence to decide this territorial dispute under the Accord-Cadre, in the absence of a conventional boundary, through the attribution of territory based on the respective titles each Party can prove over regions of the Libya-Chad borderlands. To deny this would be to repudiate the Accord-Cadre.

CHAPTER II. IN ATTRIBUTING TERRITORY THE COURT WOULD BE CARRYING OUT A NORMAL JUDICIAL FUNCTION

2.15 This Chapter deals with the jurisdictional aspects of the Court's authority to resolve the dispute by attributing territory to one Party or the other. In Part IX, the judicial process to determine the boundary by attribution of territory will be examined in the light of the facts of this case.

SECTION 1. Chad's Incorrect Contentions

2.16 The CM starts right off with the contention, quoting from Libya's Notification of the Accord-Cadre of 31 August 1990, that if no conventional boundary exists, as Libya maintained in its Notification, then the Court will be called on to perform a task not contemplated by the Accord-Cadre:

---

[11] The legal basis for arriving at this boundary is not part of Chad's Submissions, but all three theories advanced by Chad lead ineluctably to the same line; so the Court may choose between these alternative theories, according to Chad, provided it reaches the only permissible conclusion.

"une mission d'amiable compositeur"[12]. As the *CM* points out, quite correctly, Article 38, paragraph 2, of the Statute of the Court requires the parties to a dispute submitted to the Court expressly to agree in order for the Court to assume such a role. But Chad proceeds from this correct analysis of the Court's Statute to reach an entirely incorrect conclusion: that the Court in this case can only act to confirm the precise boundary line set out in Chad's Submissions, for otherwise it would be required to act as "amiable compositeur"; and the Parties have not agreed to confer such a mission on the Court.

2.17 In spite of an extensive discussion of the law relating to delimitation of boundaries and attribution of territory, nowhere in its Chapter II or elsewhere does the *CM* make any serious attempt to explain exactly why the Court would be required to act *ex aequo et bono* if it resolved the dispute on any basis other than the acceptance of the precise boundary line claimed by Chad. The *CM* just makes - and frequently repeats - such an assertion, as in the following statement, for example:

> "C'est seulement lorsqu'aucune frontière n'a été fixée ou qu'il n'est pas possible de constater où passait un tracé accepté, qu'il peut s'avérer nécessaire de se baser sur des considérations autres que *purement conventionnelles*[13]."

This would seem to imply that if the Court should stray from the determination of a boundary on the basis of one or more treaties it would necessarily be required to arrive at its decision not on the basis of applying principles of international law but *ex aequo et bono*; and such an inference seems confirmed by the sentence that follows the one quoted above:

> "Dans certains de ces cas, le Tribunal est spécialement prié de déterminer une frontière par référence à des principes équitables [citing the *Bolivia-Peru arbitration*][14]."

2.18 In other words, the *CM* implies that if determining the boundary involves a task that goes beyond the interpretation of international instruments in order to find a boundary line it requires the agreement of the

---

[12] *CM*, p. 12, para. 6.

[13] *CM*, p. 59, para. 51. Emphasis added.

[14] *CM*, p. 59, para. 51.

Parties to act ex aequo et bono for the Court to proceed further. Thus, the same paragraph continues in the following way:

> "Aucune tâche de cette nature n'a été confiée à la Cour dans la présente affaire. Au contraire, sa fonction consiste à déterminer la ligne établie en tant que frontière tchado-libyenne, et de décider si ce tracé est opposable aux parties. Il n'est pas demandé, à la Cour de statuer ex aequo et bono et les Parties ne l'ont pas chargée d'agir en tant qu'amiable compositeur[15]."

2.19 In the Section that follows, Libya will demonstrate that precedent and doctrine overwhelmingly reject any such conclusion. Nevertheless, this line of argument in the CM may be comforting in one respect: it suggests that if the Court rejects such an argument, and holds that the Court can settle this dispute without requiring an agreement to act as amiable compositeur, then the Accord-Cadre confers on the Court the compétence to do so.

2.20 There is a rather incomplete discussion in the CM of the clear distinction between a tribunal acting ex aequo et bono and a tribunal applying equity infra legem as part of applicable principles and rules of international law. For example, the CM fails to refer to the Court's Judgment in the Tunisia/Libya Continental Shelf case, where this distinction was discussed[16]; or to the Rann of Kutch arbitration where the tribunal ruled that equitable considerations should be taken into account in the context of applying international law in attributing the territory in dispute[17].

2.21 The CM limits its discussion to suggesting that the North Sea Continental Shelf cases concerned special circumstances not applicable here; and it then refers to the Burkina Faso/Mali case as support for the assertion that "l'équité contra legem n'a aucune place en la matière"[18]. This is a false target: there is no question in this case of a resort to equity contra legem. Furthermore, the discussion of this point in the Burkina Faso/Mali case has no relevance: there is no question here of attempting to apply equity to override the principle of uti possidetis juris, for there is no conventional boundary line. Statements such as the following are quite beside the point:

---

[15] CM, p. 60, para. 51.

[16] I.C.J. Reports 1982, p. 60, para. 71.

[17] The Indo-Pakistan Western Boundary (Rann of Kutch) Case, (India v. Pakistan), Award of 19 February 1968, 50 I.L.R., p. 254.

[18] CM, pp. 58-59, para. 48.

> "Ce n'est pas simplement que l'équité ne peut jouer contra legem pour réviser une frontière; c'est que les traités pertinents résolvent ces questions[19]."

This may be true if the relevant treaties do in fact resolve the boundary question; but if they do not do so, as Libya has demonstrated in its Memorial and as will again be shown in this Counter-Memorial, it does not follow that the Court has to resort to equity contra legem to resolve the dispute, although equity infra legem most certainly will have a bearing on the outcome of the case.

2.22 Not only does the discussion in the CM fail to justify its contentions concerning the role of the Court in such circumstances, but what it says is inconsistent and contradictory. In discussing the Island of Palmas arbitration, the CM acknowledges that the case concerned the attribution of territory (adding parenthetically that in Chad's view this would be an incorrect characterization of the Libya-Chad dispute) and that in such a case, as Judge Huber there maintained, "la Cour pourrait appliquer le droit relatif à l'acquisition d'un titre". The CM goes on to say:

> "Alors que les arguments des Parties dans ces affaires peuvent s'avérer relatifs, les critères selon lesquels elles doivent établir la souveraineté sont clairs et objectifs. Il n'y a pas de place pour l'équité dans la solution juridique de ces questions[20]."

It is hard to know what the CM means to say. The present case, in the absence of a conventional boundary, is just such a case of attribution to which "clear and objective" legal principles would apply; the Court would not be required to act ex aequo et bono or as amiable compositeur at all. The CM fails to explain why, in this case, the Court cannot do what the tribunal did in the Island of Palmas case, although the CM admits that in the latter case "clear and objective" legal principles were applied. It is nowhere made clear in the CM why in Island of Palmas the Tribunal could attribute territory without acting ex aequo et bono while the Court here, were it to assume the task of attributing territory, would perforce be acting ex aequo et bono.

---

[19] CM, p. 59, para. 50.

[20] CM, p. 58, para. 46.

2.23 In concluding this point, it must be emphasized that the mission the CM envisages for the Court in the present case appears to overlook certain juridical concepts that are essential, even elementary, which emerge from Article 38 of the Statute of the Court. When, as here, the Court has not been requested by the parties "to decide a case ex aequo et bono" (Article 38, paragraph 2), the Court must "decide in accordance with international law" (Article 38, paragraph 1): none of the sources of international law may then be ignored. This has two direct consequences.

2.24 The first consequence is that the Court unquestionably must first of all seek to settle the dispute on the basis of "international conventions", if any are found to be relevant for this purpose; but if the Court fails to find any such conventions - which is the case here in Libya's view - the Court is obliged by its own Statute to turn to the other sources of law set out in Article 38: "international custom, general principles of law", etc. In other words, the Court is operating strictly within the framework of its ordinary mission ("to decide in accordance with international law") when it decides a case submitted to it on a basis other than by simply applying international treaties. Of course, this is so for any type of international dispute, not solely territorial disputes.

2.25 The second consequence, well-established in the jurisprudence, is that even when it decides secundum jus, the Court must always accord an important role to equity: not by setting aside the rules of law as it may do in deciding ex aequo et bono (equity contra or praeter legem), but in order to modulate and integrate the application of the international rules when they so require (equity infra and secundum legem).

2.26 It is appropriate now to turn to precedent and doctrine to demonstrate that they provide no basis at all for Chad's contention that the Court here would be acting as amiable compositeur if it went beyond the affirmation of Chad's Submissions as to the precise boundary line it claims. To the contrary, precedent establishes that the Court would be exercising the same kind of ordinary judicial functions as it has in other such cases.

SECTION 2. Precedent and Doctrine

2.27 Territorial disputes involving the attribution of territory have existed for centuries, and a large body of State practice exists reflecting the evolution and general acceptance of principles and rules of international law to govern these matters[21]. An analysis of the leading cases demonstrates that well-established rules have emerged, which courts have not hesitated to recognize and to apply in a variety of factual situations. The cases selected for analysis below are among the most widely-cited judicial decisions on attribution of territory: the Island of Palmas arbitration, the Clipperton Island case, the Eastern Greenland case, the Judgment of this Court in the Minquiers and Ecrehos case, and the Rann of Kutch award. These cases establish beyond any doubt that the attribution of territory in settling territorial disputes has been considered a task perfectly suited to judicial settlement on the basis of rules of law without requiring the parties to reach agreement (pursuant to Article 38, Section 2, of the Statute of the Court) for the Court to act as amiable compositeur.

Island of Palmas Case

2.28 The Island of Palmas is an island lying roughly half way between the Philippine Islands and what was formally the Netherlands East Indies. The case involved a dispute over title to this island between The Netherlands and the United States, which was resolved in 1928 by an award rendered by Judge Max Huber (a member of the Permanent Court of Arbitration) on the basis of a compromis in which the two States selected him as sole arbitrator to decide whether the island formed "a part of territory belonging to the United States of America or of Netherlands territory". Judge Huber's Award in the case is one of the most widely-cited judicial decisions concerning territorial disputes[22].

2.29 Many of the typical facets of territorial acquisition during the period of European colonial expansion form the background of that dispute.

---

[21] For a recent review, see, Torres Bernardez, S.: "Territory Acquisition", Encyclopedia of Public International Law, (R. Bernhardt, ed.), Vol. 10, 1987, p. 496. See, also, Jennings, R.Y.: The Acquisition of Territory in International Law, Manchester, Manchester University Press, 1963, p. 164; Shaw, M.: "Territory in International Law", Netherlands Yearbook of International Law, Vol. XIII, 1982, p. 60.

[22] Island of Palmas, Reports of International Arbitral Awards, Vol. II, p. 831.

Two important treaties by which the European States attempted to order their relations following lengthy wars in the 17th and 18th Centuries were involved: the Treaty of Münster (1648) and the Treaty of Utrecht (1714). The arbitrator was faced with questions of interpretation and application of these two treaties, which he did not hesitate to deal with. There were, in addition, questions for the arbitrator to consider concerning the effect of contracts entered into by The Netherlands (or, more precisely, the Netherlands East India Company) with local chieftains. 19th Century maps played an important role, although The Netherlands also relied on earlier maps dating from the 16th Century. Documentary evidence from the 17th, 18th and 19th Centuries was at the centre of the proceedings. Yet there is no suggestion in the Award that the resulting complexity required that these matters be addressed outside the purview of recognized principles and rules of international law. Indeed, the arbitrator went to great lengths not only to review the evidence, but also to spell out the legal principles to be applied[23].

2.30 One of the reasons why this Award has so often been cited is because it systematically examined and discussed a number of concepts central to the régime governing the acquisition of terriiory. Thus, Judge Huber addressed, *inter alia*, the legal relevance of: the discovery of territory; the notification of claims; State succession; the requirements of effective occupation; and the task of judicial tribunals in assessing the relative strength of competing claims to territorial sovereignty. The Award in the case reveals the clear conviction of Judge Huber that the resolution of territorial disputes involving attribution of territory is an ordinary judicial task for a tribunal to undertake. The notion that it would require a court of law to assume the role of *amiable compositeur* in such a case is nowhere discernible in the proceedings: no such notion can be detected in the pleadings, in the Award itself, or in the subsequent doctrine, where no criticism of the Award in this respect has been uncovered[24].

---

[23] *Ibid.*, pp. 838-840.

[24] *See*, Jessup, P.C.: "The Palmas Island Arbitration", *American Journal of International Law*, Vol. 22, 1928, pp. 735-752; Nielsen, F.K.: "The Island of Palmas Arbitration" Report, Washington D.C., 1928; De Visscher, F.: "L'arbitrage de l'Ile de Palmas (Miangas)", *Revue de droit international et de législation comparée*, Vol. 56, 1929, pp. 735-762; Fuglsang, W.: "Der amerikanisch-holländische Streit um die Insel Palmas vor dem Ständigen Schiedshof im Haag", Institut für Internationales Recht an der Universität, Kiel, I. Reihe, Heft 17, 1931; Versfelt, W.J.B.: *The Miangas Arbitration*, Thesis, University of Utrecht, 1933.

Clipperton Island Case

2.31 The Clipperton Island case was decided in 1931 by King Victor Emmanuel III of Italy[25]. The King had been requested by France and Mexico to resolve "the dispute between the High Parties on the subject of sovereignty over the island of Clipperton". The Island is a small coral reef atoll in the Pacific ocean. It was discovered in 1705. No claim of sovereignty had been made until 1858, when a French merchant sea-captain declared French sovereignty over this island aboard a merchant ship after the French government had granted a concession for the exploitation of guano.

2.32 In 1897, France discovered that Mexico had also put forward a claim, and it was the resolution of these conflicting claims of the two States that the King was called upon to arbitrate. The Award in the case held that the islands were terra nullius until 1857; that the French acts undertaken in 1857 satisfied the requirement of effective occupation; that France had never abandoned her claim; and that the Mexican claim raised after 1897 could therefore not oppose the sovereign rights acquired earlier by France. The Award spelled out that since time immemorial international law had required material rather than fictive possession in addition to animus occupandi for the acquisition of territory to be effective, and that France had fulfilled these requirements as they related to this island. Considerations of equity are nowhere discussed in the Award, and a commentary of E. Dickinson makes no suggestion that in deciding the case the King was acting ex aequo et bono[26]. The Award states that its reasoning was based upon usage that had acquired the force of a rule of law.

Eastern Greenland Case

2.33 The Eastern Greenland case was decided in 1933 by the Permanent Court, jurisdiction being based on the optional clause of the Court's Statute[27]. Denmark had filed suit against Norway in order to clarify the territorial dispute existing between them over Eastern Greenland. The area covered some 2,200,000 square kilometres. Although in the present case between Libya and Chad the dispute concerns vast areas of desert and sparsely populated regions in a hostile environment, rather than the frozen expanse of the Arctic, there are a number of parallels between the settings of the two cases. Aside from the large size of the area under dispute in both cases, the background of the Eastern Greenland case concerned the colonial ambitions of two Powers blended with scientific discovery, economic greed, the fate of indigenous people, the historical uncertainties in the building of settlements and their disappearance, and issues concerning terra nullius and effective occupation. A large number of documents including maps were laid before the Permanent Court by the parties. The problems submitted to the Court were not unlike those in the present case in their historical reach and complexity.

---

[25] II RIAA, p. 1107.

[26] Dickinson, E.: "The Clipperton Island Case", Am. J. Int'l. L., Vol. 27, 1933, p. 135.

[27] Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53, p. 22.

2.34 The Permanent Court considered and ruled on aspects of international law that are before the Court in the present case: the criteria of peaceful and continuous exercise of State functions; what constitutes the manifestation of State activity; concepts of sovereignty other than those prevailing today; and the effect of treaties between third States upon the parties to the dispute. Although no two territorial cases are exactly alike, the Eastern Greenland case concerned issues in many respects similar to those in the present case. The Permanent Court addressed a host of rules concerning the acquisition of territory that are relevant here. It is of particular note that neither of the parties in that case even hinted in their pleadings that the attribution of the territory could only be adjudged on the basis of equity contra legem rather than under general principles and rules of international law.

2.35 In its submissions, Denmark asked the Permanent Court to rule that a Norwegian declaration of occupation of the area under dispute was unlawful; and Norway, in turn, asked for a ruling that Norway and not Denmark had acquired sovereign rights. In the event, the Court found that the King of Sweden and Norway had acquired a valid claim to sovereignty between 1721 and 1814, and that later developments had led to a transfer of this claim to Denmark. The Permanent Court ruled in favour of Denmark, and Norway complied without raising any issue at all over the Permanent Court having exceeded its jurisdiction by acting as amiable compositeur in reaching its decision.

2.36 The Eastern Greenland case provoked a number of scholarly articles and monographs[28]. In none did the authors suggest that the Permanent Court's Judgment deviated from the application of the general principles and rules of international law governing the acquisition of territory. There is no suggestion that the dispute had been decided ex aequo et bono.

Minquiers and Ecrehos Case

2.37 In the compromis submitting to this Court the dispute between the United Kingdom and France over the islets and rocks in the Minquiers and Ecrehos groups lying between their coasts, the two States asked the Court to determine "whether the sovereignty [in the area concerned] ... belongs to the United Kingdom or the French Republic". The Court rendered its judgment in 1953 finding in favour of the United Kingdom[29].

2.38 The submissions of the parties spelled out the different criteria by which they felt their dispute should be resolved. The United Kingdom submitted that the Court was bound to base attribution of the islands on the "effective possession evidenced by acts which manifest a continuous display of sovereignty"; alternatively, "by long continued effective possession alone, such possession being evidenced by similar acts". France asked the Court to base its decision on "original title", "effective exercise of her sovereignty", and the assumption of "the essential responsibilities relevant in her sovereignty"[30].

---

[28] See, Castberg, F.: "Le conflit entre le Danemark et la Norvège concernant le Groenland", Revue de droit international et de législation comparée, Vol. 51, 1924, pp. 252-273; Wolgast, E.: "Die dänische-norwegische Grönlandfrage", Zeitschrift für internationales Recht, Vol. 31, 1924, pp. 141-153; Bull, J.: "La question de la souveraineté sur le Groenland oriental", Revue de droit international et de législation comparée, Vol. 56, 1929, pp. 572-605; Berlin, K.: Denmark's Right to Greenland, Paris, F. Alcan, 1933; Preuss, L.: "The Dispute between Denmark and Norway over the Sovereignty of East Greenland", Am. J. Int'l. L., Vol. 26, 1932, pp. 469-487; Wolgast, E.: "Die Grönlandfrage", Zeitschrift für öffentliches Recht, Vol. 12, 1932, pp. 329-385; Cohn, G.: "Statut juridique du Groenland oriental", Revue de droit international et de législation comparée, Vol. 60, 1933, pp. 557-571; Hyde, C.C.: "The Case Concerning the Legal Status of Eastern Greenland", Am. J. Int'l. L., Vol. 27, 1933, pp. 732-738; Haver, W.: "Wurde Ostgrönland durch Dänemark in dem Zeitraum von 1921 bis 1931 okkupiert?", Kiel, Verlag des Instituts für Internationales Recht, 1937; Hambro, E.: "The Ihlen Declaration Revisited", Grundprobleme des internationalen Rechts, Festschrift für Jean Spiropoulos, Bonn, Schimmelbusch, 1957, pp. 227-236; Svarlien, O.: "The Eastern Greenland Case in Historical Perspective", Gainesville, University of Florida Monographs, 1964.

[29] Minquiers and Ecrehos, Judgment, I.C.J. Reports 1953, p. 47.

[30] Ibid., pp. 50-51.

2.39 The origins of the case harked back to ancient times: the U.K. claim to 1066 when William, Duke of Normandy, first became King of England; the French claim to the expulsion of the Anglo-Normans from Normandy by King Philip Augustus of France in 1204. Treaties concluded in the ensuing centuries were analysed by the parties, as was a Papal Bull issued in 1500. The nature of feudal relationships and their relevance to the development of territorial sovereignty were given major emphasis. The Court did not hesitate to review, to weigh and to adjudge the historical evidence presented by the parties in support of their respective claims. The Judgment in the case illustrates that factors such as the age of documents, the presence of legal structures quite different from those prevalent today, or the complexity of historical events are not considered as obstacles in deciding a territorial dispute under principles and rules of international law. Once more, the extensive commentary on this case in the doctrine reveals no suggestion that the Court ruled ex aequo et bono[31].

Rann of Kutch Arbitration

2.40 The Rann of Kutch is a tract of land, often inundated, comprising about 7,000 square miles, situated in the western region of the Indian subcontinent at the frontier between India and Pakistan. Even before the independence of these two countries in 1947, the boundary between the territorial units of Kutch, an Indian state, and Sind, a British-Indian province, was controverted. Several efforts to resolve the dispute between India and Pakistan failed, and in 1965 the escalating conflict led to hostilities. Following a ceasefire, the two States agreed to settle the matter by judicial means. An arbitral tribunal was set up under an agreement in which India asserted that there was no territorial dispute at all, while Pakistan set forth its claim to about half the area of the Rann. The verbatim records of the proceedings cover more than 10,000 pages. About 350 maps were submitted by the parties. The Award, rendered in 1968, runs to nearly 1,000 pages, a portion of which is reprinted in Volume 50 of the International Law Reports (1976).

---

[31] See, Hambro, E.: "Urteil des Internationalen Gerichtshofs vom 17 November 1953, in der Sache der Minquiers - und Ecrehos-Inseln" (in English), A.V.R., Vol. 4, 1953/54, pp. 490-497; Honig, F.: "Die Rechtsprechung des Internationalen Gerichtshofs 1951-1953", Zaö R.V., Vol. 15, 1953/54, pp. 681-730, at pp. 723-726; Bishop, W.W.: "Minquiers and Ecrehos Case", Am. J. Int'l. L., Vol. 48, 1954, pp. 316-326; Hudson, M.O. "The Minquiers and Ecrehos Case", Am. J. Int'l. L., Vol. 48, 1954, pp. 6-12; Johnson, D.H.N.: "The Minquiers and Ecrehos Case", International Comparative Law Quarterly, Vol. 3, 1954, pp. 189-216; Orcasitas Llorente, L.: "Sentencia del Tribunal internacional de Justicia de la Haya sobre soberania de las islas Minquiers y Ecréhous en el Canal de la Mancha", Revista española de derecho internacional, Vol. 7, 1954, pp. 531-549; Wade, E.C.: "The Minquiers and Ecrehos Case", Transactions of the Grotius Society for the year 1954, Vol. 40, 1955, pp. 97-109; Vismara, M.: "Affare dei Minquiers e degli Ecréhous", Communità internazionale, Vol. 10, 1955, pp. 306-309; Faria, P.: L'affaire des Minquiers et des Ecréhous, Arrêt de la Cour internationale de Justice du 17 novembre 1953, Thesis, University of Paris, 1956; Roche, A.G.: The Minquiers and Ecrehos Case (An Analysis of the Decision of the International Court of Justice), Geneva, E. Droz, 1959.

2.41 The submissions of both parties asked the Tribunal to determine the boundaries in accordance with lines as they were drawn on specific maps submitted in the proceedings. Each party argued that its own position drew support from well-established, recognized boundaries. The complex historical presentations of the parties reached back as far as the 9th Century, although developments in the 18th and 19th Centuries were given the most emphasis. Not surprisingly for this part of the world, precolonial concepts of sovereignty peculiar to that period and distinct from current notions were presented to the Tribunal as well as the intricacies of colonial relations in that area. In these respects, the elements of the case have certain parallels with the proceedings now before the Court. Oddly enough, the year 1885 witnessed events not only affecting Africa (Congress of Berlin) but also the area under dispute in the Rann of Kutch proceedings. In ways similar to the area in dispute between Libya and Chad, the borderlands there concerned "a barren track incapable of habitation and of any but intermittent use for limited purposes". The evidence concerned a mass of detail, colourful incidents and historical episodes, and colonial reports of the general kind found in the present case. The legal framework raised many of the same themes as are now before the Court in this case: issues concerning the critical date (in that case, 1819), terra nullius, occupation, acquiescence and the weighing of historical evidence.

2.42 These parallels are all the more interesting because the Tribunal stated specifically that it had decided the dispute on the basis of international law rather than ex aequo et bono (page 18). Pakistan had submitted that the agreement establishing the Tribunal had empowered the arbitrators to render a decision ex aequo et bono. In a preliminary ruling, the Tribunal made it clear, by unanimous vote, that it had no such power, and that it would render its decision on the basis of the applicable legal principles. In view of the parallels pointed out above between Rann of Kutch and the dispute between Libya and Chad, this explicit ruling, and the absence of any criticism in the literature on this point[32], fly in the face of Chad's assertion that any decision by the Court other than to accept the line claimed by Chad would transform the Court into an amiable compositeur.

SECTION 3. Conclusions

2.43 Thus, the leading arbitral and judicial decisions concerning the attribution of disputed territory lend no support to Chad's contention that, in attributing territory between the Parties, the Court would be going beyond its ordinary function of applying the principles and rules of international law to the facts and would assume the role of amiable compositeur acting ex aequo et bono, which would require the specific agreement of the Parties. The principles and rules concerning the acquisition of territory, including those governing the geographical extent of territorial claims, are of an entirely juridical character; they are amenable to interpretation and application by courts of law like any other rules of international law that courts habitually apply[33].

2.44 The criteria a tribunal will apply in resolving a territorial dispute depend, initially, on the principles of law referred to by the parties in the compromis. In State practice, a variety of criteria have been chosen: considerations of an historical, strategic, ethnographic, social, economic, geographical and political nature have been invoked[34]. If, as in the current case, the parties to a dispute do not specify in the compromis any such criteria, the Court will deduce them from the generally accepted rules of international law.

---

[32] See, Anand, R.P.: "The Kutch Award", India Quarterly, Vol. 24, 1968, pp. 183-212; Rousseau, C.: "Règlement du différend relatif à l'appartenance territoriale du Rann de Kutch", R.G.D.I.P., Vol. 72, 1968, pp. 1100-1121; Khan, R.: "Relinquishment of Title to Territory, The Rann of Kutch Award, A Case Study", Indian Journal of International Law, Vol. 9, 1969, pp. 157-176; Rama Rao T.S., "An Appraisal of the Kutch Award", Indian Journal of International Law, Vol. 9, 1969, pp. 143-156; Munshi, A.A.: "The Background and Basis of the Rann of Kutch Award", Pakistan Horizon, Vol. 23, 1970, pp. 37-50; Wetter, J.G.: "The Rann of Kutch Arbitration", Am. J. Int'l. L., Vol. 65, 1971, pp. 346-357; Munkman, A.L.W.: "Adjudication and Adjustment, International Judicial Decision and the Settlement of Territorial and Boundary Disputes", British Yearbook of International Law, Vol. 46, 1972-73, pp. 1-116, at pp. 70-81; Untawale, M.G.: "The Kutch-Sind Dispute, A Case Study in International Arbitration", International Comparative Law Quarterly, Vol. 23, 1974, pp. 818-839.

[33] See, e.g., the studies published in Judicial Settlement of International Disputes, Berlin-Heidelberg-New York, H. Mosler, R. Bernhardt, eds., 1974.

[34] For details, see, Munkman, A.L.W.: "Adjudication and Adjustment - International Judicial Decision and the Settlement of Territorial and Boundary Disputes", B.Y.I.L., Vol. 46, 1972-1973, pp. 1, 21-26, and pp. 95-110.

2.45 The Accord-Cadre in the present case imposes no restrictions on the Court in this respect: the Court has been asked, tout court, to resolve this territorial dispute. In a dispute between Venezuela and Great Britain concerning the British Guyana Boundary[35], the parties had only referred to principles of international law as the basis of the decision, and the Court decided accordingly. However, even where more specific rules have in individual cases been indicated by the parties, tribunals have, in a variety of cases and settings, nevertheless turned to the general principles of international law, when the more specific rules offered only limited guidance. In deciding in accordance with the general principles of international law, international tribunals have also to apply equitable principles, infra legem and secundum legem. In the present case, the Parties agreed on no restrictions, guidelines, or criteria binding on the Court in arriving at its decision. As to the substance of the rules of international law relevant in cases of this kind, it is useful to distinguish between norms relevant to the actions of States under international law such as good faith, estoppel and acquiescence, on the one hand, and principles and rules specific to territorial matters, on the other hand.

2.46 It is now appropriate to turn to an examination of the three theories of Chad's case.

---

[35] II R.I.A.A., p. 11.

PART III
CHAD'S FIRST THEORY IS RULED OUT BY ARTICLE 3 OF THE 1955 TREATY

3.01 Chad's first theory develops this line of argument[1]:

- The 1955 Treaty itself determined with precision the boundary line, in implementation of G.A. Resolution 392(V) of 15 December 1950;

- The 1955 Treaty defined this boundary by renvoi to the line resulting from certain "actes internationaux pertinents, expressément et limitativement énumérés", listed in Annex I of the Treaty;

- This exclusive list, "dressée avec soin", intentionally omitted any reference to the 1935 Treaty but included the 1902 Franco-Italian Accord and 1919 Anglo-French Convention;

- As a result of this renvoi, since the 1955 Treaty "constitue un titre incontestable", the juridical status of the acts referred to at the time they were adopted is not a relevant consideration; if the 1899 Declaration was limited to defining zones of influence at the time, the renvoi of the 1955 Treaty was only to the 1899 line and not to its provisions and thus not to the 1899 status of that line, which in 1955 was accepted as a boundary line, as portrayed on the map referred to in the 1902 Accord and described in words in the 1919 Anglo-French Convention.

---

[1] See, CM, p. 375, Conclusion 1 (i-vi).

CHAPTER I. THE MEANING AND INTENT OF ARTICLE 3 OF THE 1955 TREATY

3.02 It is Chad's first theory that relies most heavily on the 1955 Treaty. In order to demonstrate the basic flaws in this theory, it is necessary, first, to examine Article 3 of the Treaty in detail.

SECTION 1. The Text of Article 3

3.03 The French text of Article 3 is set out below:

> "Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant les territoires de la Tunisie, de l'Algérie, de l'Afrique Occidentale Française et de l'Afrique Equatoriale Française d'une part, du territoire de la Libye d'autre part, sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye, tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annexe I)[2]."

3.04 As its text clearly states, Article 3 provided that Libya and France recognized ("reconnaissaient") something about certain boundaries; they did not determine or fix anything. Certain of the boundaries concerned had indeed been fixed prior to 1955 (and prior to 1951) - for example, the Libya-Tunisia boundary, fixed by treaty in 1910, a boundary that had been both delimited and demarcated. Thus, under Article 3, Libya and France recognized that boundary as having been fixed, as well as any other boundaries that had similarly been fixed by "actes internationaux en vigueur" on 24 December 1951, the day on which Libya was declared an independent State - the critical date. Although Article 3 fixed no boundaries, it recognized those boundaries that had already been fixed under international agreements in force in 1951.

3.05 What Libya and France recognized under Article 3 were boundaries separating the territories in question that had already been fixed by such international agreements: "les frontières ... sont celles qui résultent ... ". The word "celles" can only refer to "frontières"[3]; so the recognition attached to territorial boundaries, not to lines establishing the limits of territorial expansion of the Colonial Powers (such as in Article 3 of the 1899 Declaration) or zones of influence. Some of the "actes internationaux" listed in Annex I had established boundaries (the 1910 Treaty and the Franco-Italian 1919 Accord); others had not (the 1902 Franco-Italian Accord). The recognition of the parties under Article 3 ("les frontières ... sont celles qui resultent") relates solely and exclusively to already existing boundaries at the time of Libya's independence on 24 December 1951. In other words, the text makes it clear that there can be no question of lines established before that date, for purposes other than fixing an international boundary, being transformed into boundaries by virtue of the 1955 Treaty. Only boundaries existing at the time of Libya's independence were recognized by the parties under Article 3.

---

[2] L.M. International Accords and Agreements Annex, No. 28.

[3] In the Arabic text of Article 3 the words "les frontières" are repeated rather than using "celles", so that the French equivalent would read: "reconnaissent que les frontières séparant les territoires ... sont les frontières qui résultent des actes internationaux en vigueur ...". (Emphasis added.)

3.06 To fall within the scope of the recognition accorded by Article 3, a boundary had to result from "actes internationaux en vigueur" on 24 December 1951 and not from other kinds of agreements, conduct or practices of the Colonial Powers. For example, no role in determining a boundary was envisaged under Article 3 for colonial *effectivités*.

3.07 If, as Chad suggests, the 1955 Treaty "constitue la consécration explicite de '*l'uti possidetis* de 1951'", it was only *uti possidetis juris* in its strict, precise sense. Libya and France under Article 3 agreed to consider as binding between them those boundaries that had been established by the Colonial Powers under international agreements duly concluded prior to Libya's independence and in force on that day. That was the one and only agreed standard.

3.08 The identification of "actes internationaux" referred to in Article 3 was to be made by Annex I: "tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annexe I)". There are several points to be made about this reference to the list of agreements set out in Annex I.

3.09 *First*, Article 3 expressly required that these agreements be "en vigueur" on the date of Libya's independence in order to be taken into account in recognizing any boundary emerging from them. If the list included "actes" not "en vigueur" on that date, they would have to be ignored for not having fulfilled that essential condition of Article 3. As an annex consisting of an exchange of letters between the heads of the Libyan and French negotiating teams, which was referred to in Article 3, Annex I was necessarily subordinate to Article 3 and had no independent life of its own.

3.10 There are hints in the CM that the effect of "actes" appearing on the Annex I list was to validate them as having been in force in 1951, whether or not they were. Such a daring thought must be quickly dismissed. Unless there were an express novation, under no legal theory could a treaty between Libya and France restore life to agreements between Italy and France that under the terms of Article 44 of the 1947 Treaty of Peace had been abrogated.

3.11 This is by no means a hypothetical discussion. As the CM reveals, it was not the 1935 Treaty alone that was not notified by France under Article 44 of the 1947 Treaty "comme devant faire droit entre les deux Parties"; none of the relevant Franco-Italian agreements, including those appearing on the Annex I list, had been notified to Italy[4]. An examination of the notification by France under Article 44 reveals that the Franco-Italian Accords of 1900, 1902 and 12 September 1919 were not reported under the 1947 Treaty or registered under Article 102 of the U.N. Charter, as the Treaty required[5]. The CM concedes that France's failure to notify these agreements to Italy was intentional, for France at the time aspired to obtain substantial territorial concessions under the 1947 Treaty and did not want to be tied down in any way[6]. Paragraph 3 of Article 44 of the 1947 Treaty provided:

> "Tous les traités de cette nature qui n'auront pas fait l'objet d'une telle notification seront tenus pour abrogés."

France's conduct in this respect cannot be justified on the basis that these agreements concerned boundaries, and thus survived, whether the underlying treaty was notified or not. Neither the 1900 nor the 1902 Franco-Italian Accord produced a boundary, and yet they are key elements in Chad's case. It is of particular interest to note that one treaty notified by France, the Treaty of 24 March 1860 between France and Italy, did indeed concern boundaries - boundaries of the greatest importance to France; for under this Treaty, Savoy and

---

[4] CM, pp. 122-123, para. 81.

[5] CM, Annex 210.

[6] CM, p. 123, para. 81.

Nice became part of France. This Treaty was notified by France to Italy under Article 44[7].

3.12 There is a second point to be made with respect to these listed "actes internationaux". The CM repeatedly contends that the Annex I list was carefully prepared ("dressée avec soin") and exhaustive ("limitative"). This is not borne out by the text of Article 3 or of Annex I, by the agreements listed and not listed in Annex I, or by the conduct of France and the subsequent conduct of Chad.

3.13 The reference in Article 3 to the agreements listed in Annex I refers to "actes internationaux ... tels qu'ils sont définis" in Annex I. It is not clear at all that these words were intended by Libya and France to restrict the agreements "en vigueur" to those appearing on the list of Annex I; and as it has been shown above, some agreements listed in Annex I did not meet the test of being "en vigueur" in 1951 as set out in Article 3.

3.14 The conduct of France reveals that the list was not intended to be exclusive. In the statement of the French representative to the Ad Hoc Political Committee of the U.N. (M. Naudy) on 13 December 1950, in an attempt to correct the French Government's previous bévue regarding Libya's southern frontier, the "ensemble des textes ... qui règle actuellement la matière" was referred to. Among the agreements mentioned were two that did not later appear on the Annex I list: the 1924 Anglo-French Protocol and Declaration (which "completed" the 1899 Declaration and the 1919 Anglo-French Convention). It seems evident that France did not intend to exclude from consideration these highly relevant agreements.

3.15 In its Application of 1 September 1990, Chad similarly made reference to the same two 1924 instruments in setting out the agreements between France and Great Britain from which the course of the boundary claimed by Chad was derived[8]. It is also evident that the CM relies on the 1902

---

[7] CM, Annex 210.

[8] Para. 7 of Chad's Application. See, LM, International Accords and Agreements Annex, No. 39.

Franco-Italian Accord and the Franco-Italian Agreement of 28 October 1912, agreements similarly not on the Annex I list[9].

3.16 The conclusion to which this discussion leads is that Article 3 and Annex I cannot be read to exclude other agreements that were "en vigueur" in 1951 merely because they were omitted from the list. It was intended to be a non-exhaustive listing. Libya considers certain other agreements to be entitled to the same effect as those appearing on the Annex I list (without considering whether they were en vigueur in 1951). A total of 11 such agreements are listed below at paragraph 4.09. Had the parties to the 1955 Treaty intended to exclude the 1935 Treaty they could easily have done so expressly. If that agreement is to be considered excluded, it is not because it was not on the Annex I list but because it was not en vigueur in 1951. However, it is directly relevant to the present dispute as is recognized by both Libya and Chad in their Memorials.

3.17 A third point is that, aside from the condition of being en vigueur, the mere fact that an agreement appeared on the Annex I list did not imply that a boundary separating the territories in question resulted from it. The 1898 Declaration was on the list, and yet it clearly produced no relevant boundary.

3.18 Fourthly, all of the boundaries that had been fixed as of 1951 were sought to be rectified by France either in the 1955 Treaty itself (concerning the Ghat-Toummo sector modified by Annex I) or in the 1956 Agreement (concerning the Ghadamès-Ghat sector of the Algerian boundary), which was made a condition of ratification of the 1955 Treaty[10].

---

[9] See, CM p. 182, para. 151. In addition, the CM argues that the 1934 Italo-Anglo-Egyptian Accord relating to the Libya-Sudan Boundary had the effect of making the 1919 Anglo-French Convention opposable to Italy as successor to British rights and obligations. See, CM, pp. 196-197, para. 207; see, also, para. 4.230 et seq., below. Yet the 1934 Accord was omitted from the Annex I list.

[10] See, LM, para. 5.462.

SECTION 2. The Travaux Préparatoires and Other Indicia of Intent

(a) Libyan and French Travaux and Related Records of the British Foreign Office

3.19 In its Memorial, Libya drew upon documents from the British archives to supplement the travaux available to it concerning the January and the July-August 1955 phases of the negotiations between Libya and France that led to the 1955 Treaty. The British Government was following these developments closely; both Libya and France - and particularly France after the January phase - reported frequently to the Foreign Office. The French Government, in fact, was pressing the British to lend their support to France; and the British Government (as well as the Americans) was anxious that a treaty be concluded promptly. Accordingly, the Foreign Office records are an excellent source to consult as to what the positions of the two sides were at various stages of the negotiations.

3.20 Resort to the British records is indeed necessary, for the travaux furnished with the CM are notably sparse, especially covering the second phase of negotiations in July and August. Libya has drawn upon such records as it found in its own archives, and has annexed the key documents to its Memorial. These are largely unilateral records and are far from complete, reflecting the general lack of training and experience of the Libyan officials involved at the time. The French side, in contrast, suffered from no such handicap; and it can only be presumed that there are many documents in the French archives bearing on the negotiations that have not been produced by Chad.

3.21 One of the particularly inaccurate parts of the CM is where it deals with these negotiations. The CM tries to give the picture of a competent, experienced Libyan team, surrounded by foreign experts, in contrast to the downtrodden French representatives, thwarted at every turn. For example, there is this passage:

> "L'examen de la correspondance diplomatique française relative à la négociation du Traité du 10 août 1955 témoigne de l'habileté des négociateurs libyens qui firent échec aux ambitions françaises sur la Libye et qui conduisirent le Gouvernement français à reculer pas à pas jusqu'à accepter l'évacuation pure et simple du territoire libyen[11]."

---

[11] CM, p. 100, para. 21.

It was not the skill of the Libyan negotiators that secured the evacuation of French forces from Fezzan; it was the hostility of the entire Arab world to their military presence there, and the concern the French Government itself had of being accused by Libya before the U.N. Security Council of violating Libya's territorial rights in contravention of the U.N. Charter. These were the effective forces that compelled France to pull out of Fezzan. Furthermore, after Libya's independence, neither the British nor the Americans supported France in its attempt to incorporate Fezzan into its colonial empire and, when that attempt was abandoned, to remain there militarily, as the CM admits[12].

3.22 It will be noted that the conclusion set out in the CM's passage just quoted above is said to have been based on an examination of the French diplomatic correspondence relating to the 1955 negotiations. One searches in vain for a citation to an annexed document that bears out the allegation as to the "habileté" of the Libyan negotiators. The Libyan negotiators may have exercised native good judgment and common sense; but they knew nothing about land boundaries or about the various agreements that France had listed in Annex I. The Libyans made an attempt to find out something about the 1935 Treaty, as the CM recounts[13], but the information was, at best, superficial.

3.23 When the CM comes to discussing a very sensitive matter - the introduction, preparation and contents of Annex I of the Treaty - it again presents a picture of a sophisticated, knowledgeable Libyan negotiating team. Referring to Annex I, the CM asserts:

> "La liste des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye est dressée avec soin comme en témoigne la correspondance diplomatique échangée entre les Parties. L'hypothèse d'une omission du côté libyen doit être exclue[14]."

It has already been noted above how the French Government had omitted from Annex I several key agreements[15]. This and other errors in the Annex give every indication that it was hurriedly assembled in order to try to deal with the disastrous fact, possibly only realized toward the end of the negotiations, that several key agreements, on which France's thesis concerning Libya's boundaries relied, were not en vigueur in 1951. It will also be observed that the passage quoted above refers, once again, to certain diplomatic correspondence exchanged between the parties; once again, there are no citations or references to annexed documents. As far as Libya is aware, there were no such exchanges.

---

[12] CM, pp. 108-109, para. 38.

[13] CM, p. 123, para. 83.

[14] CM, p. 123, para. 82.

[15] See, para. 3.14, et seq., above.

3.24 If the Annex I list was "dressée avec soin", it was not done so by Libya. The list was prepared entirely by the French Government; the Libyan negotiators had no part in it and, in fact, had no knowledge of the agreements on the list, which were never produced during the negotiations or discussed in any detail at all. In the circumstances, it is wrong to suggest that "une omission du côté libyen doit être exclue"; Libya had made no study at all of the list, while the French Government, which had done so, committed a series of extraordinary bévues in its preparation: two agreements, listed as being en vigueur in 1951, were not; a sizeable number of directly relevant agreements were carelessly omitted.

3.25 The CM then pushes its assertions concerning the competence and knowledge of the Libyan negotiators a step further. It asserts:

> "Au demeurant, le gouvernement libyen s'entoura de conseils avisés lors de la négociation du Traité du 10 août 1955. Il tint à ses côtés des experts suisses qui l'aidèrent à finaliser le texte[16]."

No evidence is produced by Chad to support this contention; and it is untrue, as will be shown shortly.

3.26 One must pause to wonder why such an effort has been made in the CM to try to establish that the Libyan team were more than a match for the French negotiators, when it is such a preposterous suggestion. At the time of its independence, and in 1955, Libya was one of the poorest nations in the world. Only a few years before, France had opposed Libya's independence in part because it was uncertain whether Libya had the internal competence to conduct its affairs as an independent State[17]. U.N. Commissioner Pelt had also noted Libya's meagre resources at the time, particularly in regard to trained people equipped to deal with matters of government[18]. The Four Power Commission Report had observed the same lack of trained, educated people equipped to deal with the problems facing a new State[19]. Can it be that Chad has come to realize that the 1955 negotiations were conducted under conditions in which the conduct of the French participants fell short of the standard that should have been observed, particularly in the light of the limited capability of Libya at the time to cope with the issues involved[20]?

---

[16] CM, p. 123, para. 84.

[17] See, Pelt, A.: Libyan Independence and the United Nations, New Haven and London, Yale University Press, 1970, p. 108.

3.27 Who were these "conseils avisés" surrounding the Libyan Government during these negotiations? The CM produces no evidence at all to inform us. However, the travaux produced by Chad for the January 1955 negotiations, and the Libyan travaux covering the July-August phase, identify the members of the two teams; and it is apparent that the Libyan team were hopelessly out-classed by their French counterparts. The only "conseil avisé" available to Libya was Mr. Fekini, a recent law graduate, whose training had been in Tunisia and who had virtually no background or experience in dealing with the matter of land boundaries.

3.28 There were no foreign experts advising the Libyan delegation at all during either phase of the negotiations, with the exception that during the January phase of negotiations in Paris - when the land boundary question was briefly touched on - a person from the Egyptian Embassy attended several of the meetings[21]. The CM contends, however, without producing the slightest proof, that Swiss experts assisted in finalizing the text of the Treaty. Libya had no Swiss experts helping it in these negotiations at the time. In connection with negotiating the 1956 Agreement concerning the frontier with

---

[18] Ibid., p. 381.

[19] See, e.g., "Situation économique et politique des anciennes colonies italiennes (D'après le rapport de la Commission d'enquête des quatre Puissances dans les anciennes colonies italiennes)", Notes Documentaires et Etudes, 29 novembre 1948, No. 1026, Série Internationale (CLXXXVIII), pp. 1-32. (A copy of these pages is attached at Exhibit LC-M 4.)

[20] This subject is pursued further in Part VII, below: "Good Faith in the Law of Treaties".

[21] See, CM, Annex 241.1.

Algeria, a Swiss expert did participate; but that was an entirely separate matter occurring over a year later[22].

3.29 The CM contends that the text of Article 3 of the 1955 Treaty is clear and that there is no need to interpret it; and it adds:

> "Le texte du Traité étant clair, il n'y a pas lieu de recourir aux travaux préparatoires. Mais à titre subsidiaire, ceux-ci en confirment le sens et sans ambiguïté[23]."

But this contention must be taken on faith since the CM produces practically no *travaux* for the critical second phase, during July-August 1955. The CM refers to "le récit de la séance du 26 juillet 1955" and claims that it reveals that -

> "... l'attitude libyenne confirma l'acceptation explicite de la frontière du Tibesti telle qu'elle résulte des actes internationaux cités dans l'annexe au Traité ...[24]."

Presumably the "récit" referred to consists of minutes or some kind of record of the 26 July meeting. Libya has been unable to find any such document either cited in or annexed to the CM.

3.30 In fact, the CM and one of its annexes show this statement to be incorrect on its face; for the CM reveals that the Annex I list of "actes internationaux" did not make its appearance until early August, some days after the 26 July meeting:

> "C'est d'ailleurs, semble-t-il, lors de la négociation finale que la décision fut prise de substituer à une référence générale aux textes internationaux en vigueur, une énumération limitative des actes internationaux définissant la frontière[25]."

---

[22] *See*, para. 3.110, below.

[23] CM, p. 139, para. 127.

[24] CM, p. 136, para. 115. This excerpt from the CM again reveals its obsession with Tibesti (and with Aouzou). *See*, para. 1.16, *et seq.*, above.

[25] CM, p. 136, para. 119.

3.31 In support, the CM cites a document described as a "tableau comparatif"[26]. The document is neither signed nor dated; it is a unilateral French summary of the result of the negotiations, as reflected in the Treaty as signed. The CM suggests it was probably prepared in August 1955[27]. Although this rather unimpressive piece of travaux is hardly binding on Libya, it brings out that, in the view of France, the alleged agreement of Libya and France in January 1955 to "s'en tenir aux stipulations générales des textes internationaux en vigueur à la date de création de l'Etat libyen" had not been disavowed in August but rather that -

> "Le règlement de cette question est précisé par l'article 3 du Traité et par son annexe I[28]."

It refers to the "énumération limitative des actes internationaux limitant les frontières" set out in Annex I.

3.32 Although Libya rejects the document's interpretations and characterizations of Article 3 and Annex I for reasons already stated above, this document, together with the summary of the chief French negotiator Ambassador Dejean of the situation as it stood on 28 July[29], shows that the Annex I list had not yet made its appearance in the negotiations, for M. Dejean summarized the situation in this way:

> "L'article 3 maintient que les frontières sont celles qui résultent des actes internationaux en vigueur lors de la constitution du Royaume de Libye."

There is no mention at all of any list of agreements set out in Annex I. So clearly, as of 26 July, Libya had not even seen this list; and the contention that at the 26 July meeting Libya had "explicitly accepted" the boundary resulting from these agreements must be rejected. This is confirmed by the Libyan travaux relating to the 26 July meeting. Annex I made its appearance then, but it only concerned the frontier between Ghat and Toummo and the demarcation commission to demarcate that boundary. There is no mention of the list, which had yet to be added to Annex I.

---

[26] CM, Annex 269.

[27] CM, p. 136, para. 119.

[28] CM, p. 137, para. 120.

[29] CM, Annex 268.

3.33 It is remarkable that these two documents - the 28 July report of Ambassador Dejean to the Quai d'Orsay, concerning the progress of negotiations (CM, Annex 268), and the unsigned, undated "tableau comparatif" (Annex 269) - are the entirety of the French travaux furnished with the CM covering the July-August negotiations. Instead of furnishing all of the documentary evidence that is no doubt available, the CM focusses on several episodes, partly to confirm its contentions as to the intent of Libya in the final phase of the negotiations, partly as an indication of Libya's alleged acquiescence in the French view as to the boundary. The first, in order of time, is what the CM refers to as the "Aozou incident"; the other concerns a map allegedly produced by Libya during the negotiations in July 1955 said to have placed part of Tibesti within Libyan territory.

(b) The "Aouzou Incident"

3.34 This episode took place on 28 February 1955, in between the two sets of 1955 Treaty negotiations; it has already been touched on above[30]. The LM concluded that the significance of this event (more accurately called there the "Moya incident" for it was at Moya that the episode took place) was two-fold[31]: (i) it revealed the French Government's internal doubts as to the existence of a conventional boundary along Libya's southern frontier; and (ii) it was an early attempt by Libya to install the machinery of government in the Libya-Chad borderlands, an initiative that France repelled with military force[32]. It is interesting to note that M. Bernard Lanne, one of Chad's most articulate supporters in its territorial dispute with Libya, arrived at the conclusion that the incident "prouva que la Libye continuait de contester les frontières"[33].

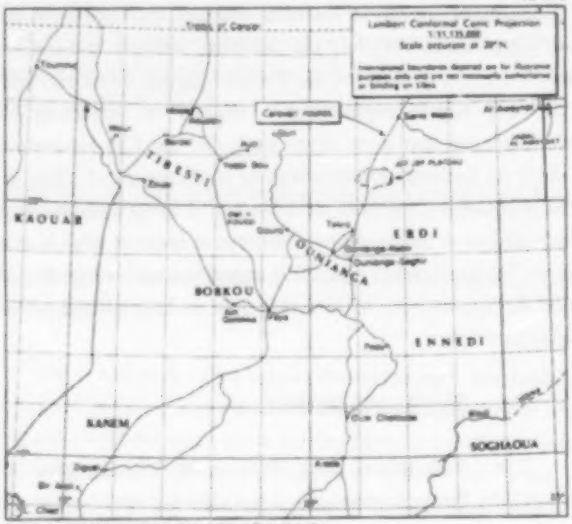
---

[30] See, para. 1.19, et seq., above.

[31] LM, paras. 5.512-5.517. The locations of Aouzou and Moya are shown here on Map LC-M 9.

[32] Ibid.

LC-M 9


Tropic of Cancer
Lambert Conformal Conic Projection
Caravan routes
TIBESTI
KAOUAR
ERDI
OUNIANGA
BORKOU
ENNEDI
KANEM
SOGHAOUA

Specially prepared for presentation to the International Court of Justice

3.35 The CM reaches quite a different conclusion, contending that this episode resulted in the confirmation by Libya of the "international boundary"[34]. It will be noted that this event and an earlier one, the so-called "Jef-Jef incident" of 1938[35], play a pivotal role in Chad's case and are given major emphasis in the CM. Both "incidents" were in reality minor events that have been blown up out of all proportion as part of Chad's recognition-acquiescence case[36].

---

[33] Lanne, B.: Tchad - Libye: La querelle des frontières, Paris, Karthala, 1982, p. 210. LM, Exhibit 45.

[34] The "Aouzou incident" is discussed principally at CM, pp. 132-137, paras. 106-121 and at pp. 284-289, paras. 296-311.

[35] The Jef-Jef "incident" is dealt with in para. 8.28, et seq., below. Jef-Jef is also shown on Map LC-M 9. The incident was regarded by Libya to be so trivial that it is not even mentioned in the LM. Far more significant were the exchanges of notes verbales in 1934 concerning Tekro, to the south of Jef-Jef. See, LM, para. 5.283; see, also, para. 5.87, et seq., below.

3.36 What an analysis of the facts of this episode (and the CM's discussion of it) brings out is that the post at Aouzou had been a military outpost more on paper than in reality. This is revealed in the report of Lt. Col. de Seze, a member of the French negotiating team, who was ordered to make a report after the episode[37]. According to the CM, the post at Aouzou had been established in 1930, having only been reconnoitred before that in 1914 by a French patrol[38].

3.37 The facts concerning this post set out in the CM and its annexes are contradictory and unclear; but as is shown below, the Aouzou post was not manned by the French in any real sense until June 1951. It was evacuated on 1 April 1954, "temporarily reoccupied" during the harvesting of dates in August-September 1954, and then "permanently reoccupied" in December 1954, after France had received word that the Libyans intended to visit the post[39].

3.38 It is no wonder that the Libyan authorities who organized and authorized the expedition to Aouzou, which included the mission of conducting a census under the supervision of a U.N. official, Dr. Shanawany, were not aware that Aouzou was occupied by the French, in the light of the history of sporadic "occupation" of the post by the French, and that they understood it to lie in Libyan territory, as U.N. maps at the time appeared to indicate. The CM incorrectly describes the Libyan visitors as a military mission comprised of 19 persons in three jeeps, of which 13 were Libyan military personnel, plus a doctor and a U.N. official. This is not so, as Dr. Shanawany's detailed report furnished by Chad establishes[40]. The group of 19 persons had an entirely different composition. It included no military personnel, but there were several Libyan civilian officials. The make-up of the group according to Dr. Shanawany was as follows:

---

[36] See, generally, Part VIII, below.

[37] See, CM, Annex 262, May 1955.

[38] See, CM, p. 268, paras. 231-235.

[39] See, para. 5.113, et seq., below, and the de Seze Report, CM, Annex 262.

[40] See, CM, Annex 272.

- The Deputy Director of Interior;
- The Mutassarif of Koufra;
- The Chief of Police of Koufra;
- The person just appointed Mudir of Aouzou;
- Plus 2 police, 4 drivers (for the 4 Land Rovers) and 7 other civilian employees.

3.39 These correct details lend an entirely different complexion to the episode. The Cyrenaican authorities were sending a mission south to Aouzou to install the machinery of government under a Mudir[41] who was to report to the Mutassarif[42] of Koufra. While there, it was also intended to take a census. This delegation was repelled by the French military garrison.

3.40 Chad has furnished a large number of documents bearing on the "Aouzou incident"; and the CM gives the impression that it provoked a flurry of diplomatic protests, a formal apology by the U.N., tantamount to recognizing the validity of France's claim to Aouzou, and, above all, an explicit recognition by Prime Minister Ben Halim of French sovereignty over Aouzou. When the evidence is examined it does not support these conclusions at all.

3.41 There was only one French note of protest, and Chad apparently has been unable even to find this document; it has produced a mere reference to it[43]. Even this reference, a telegram from the French Minister in Tripoli, M. Dumarçay[44], to the Quai d'Orsay, has not been produced in the original version but has been retyped. This is not acceptable evidence of either the protest or the reference. All the other French documents are internal dispatches exchanged within the French Government, which reveal that the authorities in the A.E.F. were very worried over the incident and wanted to make sure it did not damage France's posture in the negotiations then underway with

---

[41] The Mudir was a civilian (appointed by the Mutassarif), roughly equivalent to a County Administrator. The Mudir, in turn, appointed a Kaimakam or district officer for each district under his administration.

[42] Roughly equivalent to the civilian post of District Governor. See, para. 5.29, below, where these positions and the organizational structures of the Ottoman authorities in Libya and the Senoussi Order are described in tabular form. See, also, Exhibit LC-M 14.

[43] See, CM, Annex 251.

[44] Libya did not yet have accredited to it at Tripoli a French Ambassador, only a diplomat of Ministerial rank.

Libya. The CM claims this protest was "renewed" on 19 March 1955. No proof of such a new protest is offered, only a rather confusing account of requests to renew the protest made within the French Government[45]. These documents confirm what Libya said in its Memorial: that the reaction of the French Government revealed its basic insecurity as to the viability of the French thesis concerning its sovereignty over the region. These dispatches reveal, as well, the fact that French effectivités in the area were more theoretical than real. For example, the Ministre de la France d'Outre-Mer wrote the following to the Minister of Foreign Affairs, on 9 March 1955:

> "L'immensité de la frontière à surveiller et l'exiguité de nos moyens ... nous conduisent en effet à souhaiter que les Libyens ne s'attachent pas à sonder systématiquement les lacunes inévitables de notre dispositif[46]."

It is interesting that this dispatch mentions only surveillance, not occupation.

3.42 In its reply to this 9 March dispatch, the Quai d'Orsay said:

> "La réoccupation d'Aozou par un détachement français a montré au gouvernement libyen notre ferme résolution de nous en tenir strictement aux dispositions [of the 1899 and 1919 agreements][47]."

And the following was added at the end of this same dispatch:

> "Peut-être estimerez-vous opportun, dans la conjoncture actuelle, de maintenir notre occupation du poste d'Aozou, afin de prévenir toute nouvelle tentative libyenne dans ce secteur."

This suggests that in fact Aouzou had been virtually abandoned by the French and was quickly reoccupied in the light of the Aouzou episode. In the same dispatch, the Quai d'Orsay observes that M. Dumarçay had been requested to get in direct contact with the A.E.F. in order that it provide a representative to -

> "... participer à l'élaboration du projet de convention frontalière qui sera ultérieurement négocié avec le Gouvernement libyen par notre Légation."

---

[45] See, CM, p. 286, para. 303 and fns. 76 and 77.

[46] CM, Annex 252.

[47] CM, Annex 257.

Thus, it is evident that the French Government was considering the preparation of a draft boundary treaty with Libya in which the A.E.F. was to participate.

3.43 This puts in perspective the important dispatch, furnished by Libya with its Memorial, from the Governor General of the A.E.F. to the Ministre de la France d'Outre-Mer of 2 May 1955, which recommended the negotiating strategy for the forthcoming negotiations with Libya in these terms:

> "... j'estime que les pourparlers engagés en vue de la conclusion du futur traité franco-libyen devront être conduits avec la plus grande prudence et éviter toute discussion sur le tracé des frontières. Il semble que cette question ne devrait être évoquée dans les accords que pour poser le principe d'une délimitation sur le terrain à entreprendre dans l'avenir, mais en prenant pour seules bases les traités en vigueur à la date de la création de l'Etat Libyen[48]."

As the LM points out, this advice was heeded by the French Government during the 1955 negotiations[49]; and according to the Quai d'Orsay dispatch quoted from earlier, the A.E.F. was given the opportunity to participate directly in implementing this strategy.

3.44 Aside from the one alleged protest by M. Dumarçay to the Libyan Government of 4 March 1955 - a document not produced - there was no other formal action taken by the French Government, in the aftermath of the Aouzou episode, but there was a great deal of internal confusion, for France's lack of effectivités had been exposed right in the middle of the negotiations with Libya.

3.45 The CM also tries to give the oral apology of the senior U.N. official in Libya, which followed the episode, a significance that it does not merit, asserting the following:

> "Il ne faut pas négliger non plus le fait que les autorités des Nations Unies en Libye admirent elles aussi que le village d'Aozou se trouvait dans une zone sur laquelle la France exerçait sa souveraineté effective[50]."

---

[48] LM, French Archives Annex, p. 171.

[49] See, LM, para. 5.437, et seq.

[50] CM, p. 288, para. 309.

This is not only untrue but it reflects a lack of understanding of the manner in which U.N. officials act in circumstances of this kind and of their role in general. The CM relies here on two dispatches of M. Dumarçay from Tripoli, communications that are not the epitome of accurate, diplomatic reporting. The 10 March dispatch suggests that, during M. Dumarçay's meeting with Mr. Spence (the U.N. representative in Libya) some days earlier, the latter:

> "... qui a approuvé notre attitude dans cette affaire, m'a exprimé ses regrets d'avoir mêlé un de ses agents à une pareille entreprise[51]."

In a report of 20 March, M. Dumarçay summarized Mr. Spence's visit in this way:

> "M. SPENCE, Directeur de la Mission de l'O.N.U., est venu s'excuser qu'un de ses collaborateurs se soit fourvoyé dans une pareille équipée, qui a motivé naturellement une démarche de protestation de la part de cette Légation[52]."

It is submitted by Libya that the oral apology of Mr. Spence was no more than an expression of his regret that the U.N. had beome entangled in an internal matter between Libya and France. That is all Mr. Spence could properly have said; any gratuitous comments he may have made, if M. Dumarçay's description is accurate, would have been out of place and of no significance.

3.46 The last element in this episode concerns what M. Dumarçay reported was Prime Minister Ben Halim's reaction to the episode, characterized in the CM as constituting "[l]a reconnaissance formelle ... de la souveraineté française sur Aozou"[53]. The evidence produced by Chad to support this contention must be examined closely. It consists of a telegram from M. Dumarçay to the Quai d'Orsay dated 28 June 1955. Once again, the original document is not produced; only a typed draft alleged to be a copy of its text[54].

---

[51] CM, Annex 253.

[52] CM, Annex 255.

[53] CM, p. 134, para. 111. See, para. 1.19, above, for a discussion of the evolution in the CM of this alleged statement of Mr. Ben Halim from the supposed recognition of French sovereignty over Aouzou, to French sovereignty over Tibesti and, finally, over the "Aouzou Strip". Note, as well, the suggestion that this was the "formal" recognition of French sovereignty by the Prime Minister. If made at all, Mr. Ben Halim's remarks appear to have allegedly been made during an informal conversation only.

[54] See, CM, Annex 264.

3.47 The date of this dispatch is the next thing to note: the Aouzou episode occurred on 28 February; this dispatch is dated 28 June. As the CM itself brings out, rumours of other Libyan expeditions were in the air, one of which was reported by the A.E.F. on 20 June[55]. The French authorities there seemed to have been constantly on tenterhooks. There was in fact, as the LM mentions, another expedition planned in the general area in May 1955 - joint Anglo-Libyan manoeuvres to be conducted not far north of Tibesti[56]. (It will be recalled that by Treaty with Libya the United Kingdom was responsible for the defence of all of Libya.) Once again, the French authorities demonstrated an attitude verging on paranoia, and prevailed upon the British to stay as far as possible away from Tibesti. The Foreign Office dispatch that related this episode stated:

> "We conveyed our decision to the French Embassy orally rather than in writing as we felt disinclined to go formally on record about the change of a plan which we had a perfect right to make and we thought that it might be awkward with the Libyans if by any mischance some written communication which we had made were to leak out. But we agreed to meet the French because we felt that this was one small matter on which we could show our willingness to be helpful[57]."

3.48 So it would appear that M. Dumarçay's report of 28 June related to an incident other than the much earlier episode of 28 February where the Libyan mission at Aouzou was forcibly repelled by French military forces. The CM, even here, attempts to find an element of acquiescence, which it then attempts to fortify with an alleged statement of Mr. Ben Halim. Playing down the military nature of France's actions in the event, the CM concludes:

> "Bien que l'incident n'eût pas de conséquences fâcheuses grâce à la fermeté française et à l'acceptation immédiate, par les membres de la mission libyenne, des raisons motivant l'attitude française, le Ministre de France à Tripoli crut bon malgré tout d'envoyer, le 4 mars, une protestation formelle au Gouvernement libyen[58]."

---

[55] See, CM, p. 287, para. 305 and Annex 263.

[56] See, LM, para. 5.518.

[57] LM, British Archives Annex, p. 317.

[58] CM, p. 286, para. 303.

3.49 This is a completely unfounded assertion in the light of the facts as related in Dr. Shanawany's report[59]. For the Libyan group, led by the only guide they could find in Koufra, who had to be released from prison where he had been incarcerated for alleged cohabitation with his teenage step-daughter (his wife having perished in the desert with their only child), arrived half dead in the vicinity of Aouzou after a harrowing journey. They had lost their provisions and one vehicle on the way across one of the most desolate areas on Earth. There they were met by the French military with guns in their faces and forced to return, with barely the chance to take a drink from the only well they had seen in days. Yet in so doing, according to the CM, their action reflected their "acceptation immediate ... des raisons motivant l'attitude française"; and the sole official French protest - in a letter Chad has not produced or even located - was almost superfluous, the CM suggests.

3.50 Returning to the 28 June telegram of M. Dumarçay, aside from the fact that the original document is not produced, but only its purported text[60], its contents should be looked at carefully. It starts off by stating that M. Dumarçay's British colleague - presumably a reference to British Ambassador Graham - had several times successfully intervened with the Libyan Government on the matter of the transit of men and arms toward North Africa. M. Dumarçay then switches to certain rumours attributed to Libyan officers to the effect that the Libyan army was preparing "à occuper définitivement" the post at Aouzou. M. Dumarçay recounts that, in the light of these rumours, Ambassador Graham had drawn Prime Minister Ben Halim's attention to the serious repercussions such an operation might have and, M. Dumarçay adds, to the necessity of avoiding "une réédition de l'équipée"[61] of the previous February.

3.51 No evidence has been found anywhere to substantiate either this alleged conversation or what was supposedly said by Ambassador Graham, as so loosely reported. There had, of course, already intervened the May joint Anglo-Libyan manoeuvres; and it has already been noted how tense the French authorities were at the time over possible border incidents. So it could be that the French had again prevailed upon the British to intervene with the Libyan Government.

---

[59] See, CM, Annex 272. The original English version of the report of this U.N. official has been annexed hereto as Exhibit LC-M 5, since it appears only in translation in CM Annex 272, not only in view of its importance but also because it contains an hilarious description of this episode. This was hardly a mission composed of Libyans in a position to accept "des raisons motivant l'attitude française" when turned away at the point of a gun. As Dr. Shanawany reports, they were in pathetic condition, trying only to survive the rigours of their journey south and the impending perils of their return to Koufra, required by the French soldiers to be undertaken immediately.

[60] See, CM, Annex 264.

[61] "A repeat of the escapade".

3.52 Then M. Dumarçay proceeds to say, according to the retyped text, that Mr. Ben Halim, to whom he himself had given a serious warning on the subject -

> "... m'a confirmé la démarche de M. GRAHAM en précisant que son Gouvernement n'avait nullement l'intention de rouvrir la question d'Aouzou, puisqu'il reconnaît que ce village se trouvait en territoire français[62]."

According to M. Dumarçay, Mr. Ben Halim promised to inform the commander of the security forces of Cyrenaica and the civil authority there of this position.

3.53 There are two other French dispatches that bear on the matter: a 7 July 1955 dispatch from the Quai d'Orsay to the Ministre de la France d'Outre-Mer; and a dispatch dated 12 July from M. Dumarçay to M. Pinay, French Minister of Foreign Affairs. Both documents are copies of the original documents.

3.54 The 7 July dispatch mentions the rumours circulating of "une prochaine réoccupation" (emphasis added) of the Aouzou post by Libyan troops or police from Cyrenaica. This, of course, suggests there had been a previous Libyan occupation. The dispatch then refers to M. Dumarçay's report of the serious warning he had recently given Mr. Ben Halim and goes on to say that the latter:

> "... a cependant démenti formellement les intentions prêtées à ce sujet au Gouvernement libyen et s'est engagé à rappeler au Commandant des forces de Sécurité de Cyrénaïque et aux autorités de cette Province, que le Gouvernement fédéral reconnaissait l'appartenance française de l'Oasis d'Aouzou."

The dispatch concludes with this interesting paragraph:

---

[62] As noted in para. 1.19, above, if this conversation did indeed take place, Mr. Ben Halim had allegedly only mentioned the "village" of Aouzou - not Tibesti - and not the so-called "Aouzou Strip".

> "Si ces indications sont de nature à apaiser les inquiétudes du Gouverneur Général de l'Afrique Equatoriale Française sur l'éventualité d'une nouvelle incursion libyenne dans le Tibesti, vous estimerez sans doute qu'il ne serait pas opportun, pour autant, de relâcher les mesures de vigilance prises par les autorités militaires dans cette région à laquelle les Libyens n'ont certainement pas renoncé de façon définitive[63]."

So while the dispatch repeats what M. Dumarçay had reported regarding the conversation with Mr. Ben Halim, it also gives the Quai d'Orsay's evaluation of it, namely, that it was not a definitive renunciation of Libyan claims in the region of Tibesti. Apparently, the French Ministry did not accord much weight to M. Dumarçay's report from Tripoli, or it interpreted it as narrowly confined to the oasis of Aouzou.

3.55 The other dispatch is the 12 July report of M. Dumarçay to M. Pinay. It forwards a brief report of Commandant Robert concerning rumours that Libya had 30 vehicles and 100 men poised to descend on Aouzou. The report concluded that such an operation was unlikely. M. Dumarçay uses the occasion to refer again to his earlier report of his conversation with Mr. Ben Halim. However, he does not refer to the dispatch of 28 June - but one of 27 June. Aside from the fact that the document dated 28 June is not a copy of the original telegram whose text it purports to reproduce, no communication dated 27 June has been furnished by Chad. In this 12 July dispatch, M. Dumarçay summarizes what he claims Mr. Ben Halim said to him, in these words:

> "... [Mr. Ben Halim] m'a précisé - ainsi qu'il l'avait d'ailleurs déjà fait auprès de mon collègue britannique - qu'il n'entrait nullement dans ses intentions de faire procéder à l'occupation d'un Poste dont la situation en territoire français ne pouvait être l'objet d'aucune contestation[64]."

This version suggests that Mr. Ben Halim had told Ambassador Graham as well that he considered Aouzou to be in French territory. There is no evidence to support this second-hand report. Had this occurred, it certainly would have been reported to the Foreign Office; but no such report has been found in the British archives. The Foreign Office files reveal Ambassador Graham to have been a very faithful and detailed reporter of all events affecting the negotiations between Libya and France that were under way.

---

[63] CM, Annex 266. Emphasis added.

[64] CM, Annex 267.

3.56 It will be recalled that these various dispatches were prepared on the eve of resumption of negotiations, which had been delayed over and over again by the French Government while it tried to reach a side military agreement with the British concerning the defence of Fezzan in wartime[65]. In the meantime, the French Embassy in London had been importuning the Foreign Office to support its position in the negotiations[66]. The Foreign Office reaction appears in a dispatch sent to Ambassador Graham on 11 May:

> "The Quai d'Orsay apparently considers that the French frontier to the south of Libya ought to extend northwards to embrace the whole of the Tibesti Massif. This of course is bound up with the Laval-Mussolini Agreement of 1935 which was abrogated by the Italians in 1938. The French Embassy will probably be letting us have some maps showing what it is that they want. My personal view is that we should be well advised to keep out of the potentially awkward question of frontier rectifications[67]."

It seems evident from the evidence of how closely the British were following this question that any declaration of Mr. Ben Halim of the kind reported by M. Dumarçay would have been promptly reported by Ambassador Graham, had it been made to him. No such document has been found.

3.57 Whatever Mr. Ben Halim may have said to M. Dumarçay - and Libya does not accept the evidence produced by Chad as any kind of proof of what he did say -, the Quai d'Orsay obviously did not evaluate it as a renunciation of Libya's claims in the region[68]. In spite of the alleged Dumarçay-Ben Halim conversation, the French Government was busy trying to enlist British help and support; and the A.E.F. continued to have a case of the jitters over rumours of a Libyan expedition to Aouzou, well after this alleged conversation.

---

[65] See, LM, paras. 5.452 - 5.453.

[66] LM, paras. 5.449 - 5.458.

[67] LM, para. 5.449 and British Archives Annex, p. 315. Emphasis added. As described in detail in the LM, para. 5.449, et seq., the French did furnish the British shortly thereafter with two maps, one of which detailed the French position concerning Libya's boundaries. See, LM, Maps Nos. 91 and 92, referred to in para. 5.454. It is, thus, all the more remarkable that no such map was ever produced by France during the actual negotiations with Libya; only a general reference to "actes internationaux en vigueur" was made, supplemented by a list of such "actes" added to Annex I of the draft treaty in August 1955, a few days before signature.

[68] See, para. 3.54, above.

3.58 What is perhaps the key point is that when the negotiations resumed on 19 July, there is no indication that the French delegation led by Ambassador Dejean ever raised or referred to this alleged statement of Mr. Ben Halim. Similarly, Libya's records show no evidence of this statement having been discussed. If Mr. Ben Halim had made the statement, it is inconceivable that France would not have invoked it expressly. Thus, the significance attributed to the retyped version of this report of M. Dumarçay in the CM is not reflected in the *travaux* of the 1955 Treaty at all. As for the "Aouzou incident" itself, and the other episodes and rumours at the time, all they reveal is the intense insecurity of the French Government as to its position concerning Libya's southern boundary, which the Governor General of the A.E.F. had cautioned should be dealt with prudently and without directly raising the issue of a boundary line at all for fear of Libyan disagreement. The attempt in the CM to portray the withdrawal at the point of a gun of the exhausted Libyan mission that arrived at Moya on 28 February as official Libyan acquiescence in the French position as to the boundary only demonstrates the weakness of this part of Chad's argument.

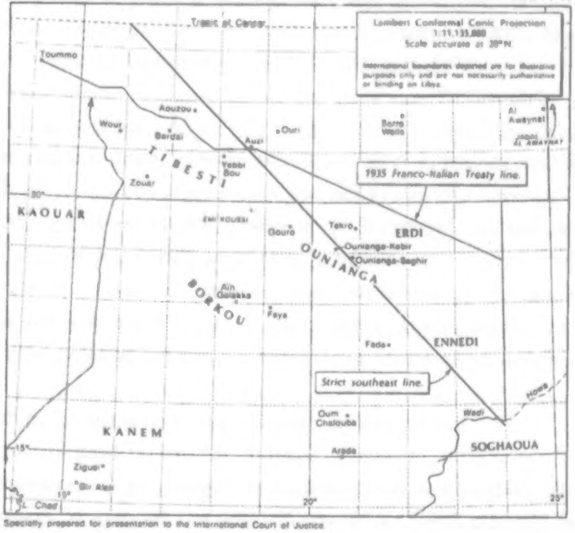
3.59 It must also be borne in mind, as pointed out in Part I, that the term "Aouzou Strip" or "bande d'Aozou" had not yet been invented[69]; and the "Aouzou incident" was about the oasis of Aouzou not the area subsequently dubbed the "Aouzou Strip". What was involved was the oasis of Aouzou, where the military post established on paper had remained virtually unmanned by French military forces until the 1955 negotiations approached. Until 1930, Aouzou had been shown on French maps as being part of the A.O.F. It lies in the northwest part of the Libya-Chad borderlands. Italian maps (except those reflecting the 1935 Treaty) showed no boundary east of Toummo, so whether Aouzou lay in French or Italian territory was not indicated on these Italian maps. The 1935 Treaty would have placed Aouzou, which lay just north of the line, on the Libyan side of the boundary line agreed between Italy and France. On the other hand, the southeast line described in Article 3 of the 1899 Declaration, properly drawn as a true southeast line (as the British perceived it in 1899), would have left Aouzou to France (Map LC-M 10). So whatever Mr. Ben Halim is alleged to have said, it concerned only an oasis in the northwest part of the Libya-

---

[69] *See*, para. 1.16, *et seq.*, above.

Chad borderlands in a strip of territory which Chad calls the "bande d'Aozou", the strip itself comprising an area of the approximate size of Switzerland. It is likely that, if these conversations did take place, Mr. Ben Halim said no more than that he realized French forces were in Aouzou and he did not intend to disturb that situation since negotiations leading to the 1955 Treaty were to be resumed.

LC-M 10


Tropic of Cancer
Lambert Conformal Conic Projection
Scale accurate at 20°N
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.
Toummo
Aouzou
Wour
Bardai
Auzi
Ouri
Sarra Wells
Al Awaynat
Jabal Al Awaynat
TIBESTI
Yebbi Bou
Zouar
1935 Franco-Italian Treaty line.
20°
KAOUAR
Emi Koussi
Gouro
Tekro
ERDI
Ounianga-Kebir
Ounianga-Seghir
OUNIANGA
Ain Galakka
BORKOU
Faya
Fada
ENNEDI
Strict southeast line.
Howa
Wadi
Oum Chalouba
KANEM
15°
Arada
SOGHAOUA
Ziguei
Bir Alali
L. Chad
15°
20°
25°

Specially prepared for presentation to the International Court of Justice

(c) The Map Allegedly Produced by Libya During the July-August 1955 Negotiations

3.60 The second episode that the CM tries to build into an important incident concerns a map produced, according to the CM, by Libyan officers during the 27 July negotiation session, showing as part of Libya a portion of Tibesti[70]. This account appears in the CM under the rubric: "La Libye confirme la frontière internationale en toute connaissance de cause lors de la négociation ultime de juillet-août 1955". This is another episode that the CM contends supports the following statement:

---

[70] See, CM, p. 136, para. 116.

> "A plusieurs reprises, son [the Libyan Government's] attention a été explicitement attirée sur la question de sa frontière méridionale. A chaque fois, les autorités libyennes se sont inclinées devant la position française[71]."

The other episodes constituting "plusieurs reprises" were the withdrawal from Aouzou of the Libyan mission at the point of a gun on 28 February 1955 and the statement reported to have been made by Mr. Ben Halim, as recounted in the retyped text of a telegram from M. Dumarçay in Tripoli dated 28 June 1955, both of which have been dealt with above. This third strand of the argument is as weak and contrived as the others.

3.61 The evidence produced by the CM is a telegram to the Quai d'Orsay from Ambassador Dejean reporting on the meetings of 27 and 28 July[72]. In relevant part, this is what he reported:

> "L'article 3 maintient que les frontières sont celles qui résultent des actes internationaux en vigueur lors de la constitution du Royaume de Libye. Alors que des Officiers libyens avaient produit hier une carte qui englobait dans la Libye un (mot passé) du Tibesti, M. BEN HALIM a reconnu ce matin en séance que les accords devraient leur être appliqués. Toute difficulté majeure est ainsi exclue."

3.62 The CM entirely misses the meaning and importance of this report, for it springs to the conclusion that, on the basis of this report, the Quai d'Orsay in a subsequent note of 10 September 1955 was justified in concluding that Libya -

> "... a renoncé à se prévaloir des accords Laval-Mussolini du 7 janvier 1935, ce qui lève toute hypothèque libyenne sur le Nord du Tibesti[73]."

3.63 The first thing that is interesting about this report is that it preceded the appearance of the list of agreements that was added to Annex I in

---

[71] CM, p. 139, para. 127.

[72] CM, Annex 268. The incompleteness of the French travaux produced by Chad is illustrated by the fact that this dispatch refers to earlier correspondence, which might be very revealing, but which is not produced.

[73] CM, p. 136, para. 117, and Annex 271. It is again noted that the French focus was on the north of Tibesti, not the whole of the so-called "Aouzou Strip", and not the entire borderlands.

August; the proposed formula was still that the boundary should be based on agreements in force in 1951. Thus, according to M. Dejean, it was not the fact that the 1935 Treaty had been left off the Annex I list - a list that had not yet been tabled - but that the 1935 Treaty was not in 1951 en vigueur, which constituted Libya's (and France's) so-called renunciation of the Treaty. Since the 1902 Franco-Italian Accord and the Franco-Italian Accord of 12 September 1919, by Chad's own admission, were not en vigueur in 1951, the same reasoning would lead to the conclusion that the parties had similarly "renounced" the application of these agreements in delimiting the boundary. It would appear that M. Dejean had not yet been informed of this fact, which the Annex I list was presumably intended to cure.

3.64 The second aspect of this episode concerns why such a map would have been produced at the negotiations on 27 July, if indeed it was. The Libyan travaux contain no mention of such a map; but if one was produced as the French travaux indicate, it could only have been in relation to the boundary being discussed; this was not the southern boundary of Libya but the western boundary with Algeria, as far as Toummo. Colonel Senoussi al-Atioush, the Libyan military officer who attended the meeting, was concerned only with this sector of the boundary. Shortly after this alleged map incident, he left as part of a joint expedition to the Ghat-Toummo region to examine on the ground the part of the boundary to be rectified between Ghat and Toummo[74]. Assuming such a map was produced, as Chad's unilateral record indicates, it would have been presented by the only Libyan officer on the negotiating team, Colonel al-Atioush, and not for purposes of discussing the southern boundary, which was not his concern, but the western boundary between Libya and Algeria, which was.

3.65 The third point is that if, as the French travaux also indicate, the southern boundary shown on the map happened to be a boundary line other than the 1899-1919 line - for example, a line similar to that appearing on the U.N. maps at the time - that would have been not at all surprising. France's travaux show that instead of confronting the issue head on and discussing this boundary, Ambassador Dejean avoided doing so by an oblique reference to the boundary resulting from "actes internationaux en vigueur" at the time of Libya's independence. Nor was there anything striking about the fact that:

---

[74] See, LM, paras. 5.461 - 5.462.

> "M. BEN HALIM a reconnu ce matin en séance que les accords devraient leur être appliqués."

This was the formula already agreed by Libya and France in January and it established the basis for the separate delimitation exercise to come later, which Libya had insisted not be a condition of signing the Treaty. The only exception to this formula had to do with the Ghat-Toummo sector of the western boundary which, in Annex I, the parties agreed to modify by specifying three points through which the line should pass, thus altering the 1919 Franco-Italian Accord line in France's favour. It was in connection with this rectification that the map had been produced. This has been fully discussed in the LM and is supported by the travaux produced by Libya[75].

3.66 M. Dejean's account of the meetings on 27-28 July concluded, as to Article 3 of the draft Treaty, that as a result of Mr. Ben Halim's recognition that "les accords devraient leur être appliqués" -

> "Toute difficulté majeure est ainsi exclue."

And M. Dejean went on to say:

> "Il reste à se mettre d'accord sur une délimitation de la frontière entre GHAT et TOUMMO pour laquelle les textes sont d'une interprétation malaisée. Des Officiers spécialement venus de Paris s'y emploient avec des Officiers libyens au sein d'une Sous-Commission créée ce matin[76]."

This brings out the facts just referred to above. Any map that they might have been examining would have been produced for the purpose of discussing the Ghat-Toummo sector. M. Dejean's expression of relief - "any major difficulty is thus excluded" - reveals in the clearest way that he was following the A.E.F.'s advice on the negotiating strategy to be followed in respect to the southern boundary: to avoid discussing any line and to merely refer to the "actes internationaux en vigueur".

3.67 A Foreign Office dispatch of 4 August 1955 is relevant here. It is a note from A.A. Duff in the British Embassy in Paris to T.E. Bromley of the

---

[75] See, LM, paras. 5.454 - 5.462 and Exhibit 74.

[76] CM, Annex 268.

Foreign Office's African Department in London, reporting on the status of negotiations in Tripoli, based on information given to him by Mr. Barker of the British Embassy staff, following a conversation the latter had had with M. Beaudouin of the Quai d'Orsay[77]. He reports: "Full texts have been agreed between the two delegations for the Treaty of Friendship ..."; and he goes on to describe in some detail the draft Treaty's contents. He mentions that there remained certain supplementary matters to be negotiated, notably financial ones, and that the French wanted to delay actual signature until the parliamentary holidays had started. (Actual signature occurred in fact on 10 August, six days after this British dispatch.) The matter of boundaries is referred to in this way:

> "Beaudouin did not mention that there had been any difficulty on the frontier question but Barker understood from a conversation on the telephone which Beaudouin had within the department during his visit that the question had not yet been discussed in detail."

This confirms the fact that the southern boundary had in effect been settled on 28 July by a reference to "actes internationaux en vigueur" in 1951[78]. The Sub-Committee studying the western boundary was on a field trip to examine the Ghat-Toummo segment, as Colonel Senoussi al-Atioush's report annexed to the LM brings out[79]. Presumably they had yet to return and assist in putting the final touches to the language of Annex I relating to that sector.

3.68 It must be emphasized that when the southern boundary was settled by means of a general reference to the international agreements in force in 1951 the Annex I list of agreements had yet to be tabled by the French. So this list was evidently introduced for a different reason; and the evasive manner in which the CM deals with this matter appears so to indicate. For example, right after its discussion of these negotiations and of M. Dejean's report, the CM remarks:

---

[77] FO 371/113897. Exhibit LC-M 6, hereto.

[78] Exhibit LC-M 7 hereto is a dispatch from Ambassador Graham to the Foreign Office dated 29 July 1955 (FO 371/113896 170799). In it Mr. Graham reports:

> "My French colleague and leader of the French Delegation called on me this morning and confirmed that in 8 days they had reached full, satisfactory agreement with the Libyans ... The French are given full satisfaction on other points, including frontiers."

[79] See, LM, paras. 5.461 - 5.462 and Exhibit 74.

> "C'est d'ailleurs, semble-t-il, lors de la négociation finale que la décision fut prise de substituer à une référence générale aux textes internationaux en vigueur, une énumération limitative des actes internationaux définissant la frontière[80]."

From the evidence addressed so far, it seems more likely that the real reason for introducing the Annex I list related to the last-minute realization by the French Government that the general formula could be disastrous since several of the agreements on which France's thesis as to the boundary relied were found not to be "en vigueur" in 1951, for they had not been notified under Article 44 of the 1947 Italian Peace Treaty or registered under Article 102 of the U.N. Charter. Stripped of the support of these treaties, the French thesis had no basis whatsoever. So the Annex I list would appear to have been produced at the last minute in the hope that this would somehow cure the deficiency; and the Libyan team remained blissfully ignorant of what this was all about.

(d) The Absence of the 1935 Treaty from the Annex I List of Actes Internationaux

3.69 The crux of Chad's contention that in the 1955 Treaty Libya renounced any claim based on the 1935 Treaty is that the 1935 Treaty did not appear on the Annex I list. There is no evidence introduced by the CM, however, to show that Libya intended to renounce the Treaty in this fashion. The French travaux bearing on the point consist only of Ambassador Dejean's report of 28 July 1955[81] and the unsigned, undated "Tableau comparatif", which states:

> "Enumération limitative des actes internationaux définissant les frontières, excluant les accords Laval-Mussolini de 1935 (par conséquent renonciation de la Libye à toute prétention sur le Tibesti)[82]."

This may have been the French Government's view of the effect of leaving the 1935 Treaty off the Annex I list, and it certainly is another demonstration of how the A.E.F. strategy of "prudence" in discussing the southern boundary was observed to the hilt. But the Annex I list was prepared by the French Government; and no evidence has been produced to show that any of the agreements listed were discussed at all with Libya. The list did not make its appearance until after the southern boundary question had been resolved to M. Dejean's satisfaction by a general reference to "actes internationaux en vigueur"[83].

---

[80] CM, p. 136, para. 119.

[81] CM, Annex 268.

[82] CM, Annex 269.

3.70 The Libyan travaux covering the 28 July meeting record that Ambassador Dejean brought up the subject of the 1935 Treaty and asserted that it had not been ratified by the French parliament and was thus "illegal and had no value internationally". This was a rather misleading statement. The 1935 Treaty was approved by both the French and the Italian parliaments by an overwhelming majority, but the instruments of ratification of the two Governments were never formally exchanged, as called for in the Treaty[84]. The 1935 Treaty and companion Accords had a special relevance, as the CM demonstrates in its heavy reliance on the Treaty in Chad's attempt to establish Italian recognition of and acquiescence in the so-called 1899-1919 line as Libya's southern boundary. The LM, on the other hand, demonstrates that the 1935 Treaty established the absence of any conventional southern boundary of Libya, and that France acknowledged that fact, notably in the Exposé des motifs accompanying the draft law submitted to the French parliament and overwhelmingly enacted[85]. So M. Dejean wrongly described the Treaty to Mr. Ben Halim as "of no value internationally", even from the French (and now Chad's) point of view.

3.71 Libya's record of the 28 July meeting indicates that Mr. Ben Halim proposed to defer the question of boundaries until the Libyan side had had time to study the subject. The remainder of the discussion concerned the western boundary and, particularly, the Ghat-Toummo sector. The CM attempts to overcome the absence of any express renunciation by Libya of the 1935 Treaty with two arguments: (i) that the Annex I list had been "dressée avec soin" and, thus, no accidental omission by Libya could have been possible; and (ii) that Libya looked into the status of the 1935 Treaty at the end of the January 1955 sessions in Paris[86]. The first argument has already been dealt with and shown to be incorrect[87]. The second has a grain of truth in it.

---

[83] See, para. 3.66, et seq., above.

[84] See, in this regard, CM, pp. 123-124, para. 85, quoting from a statement by M. Dronne to the Conseil de la République on 16 March 1950, which contains the entirely incorrect remark that the 1935 Treaty was never approved by the French Parliament. Both the French and Italian Parliaments, by large majorities, authorized its ratification and the exchange of instruments. See, LM, para. 5.343, et seq.

[85] See, LM, para. 5.336, et seq.

3.72 The Libyan Minister of Finance is believed to have made a trip to Rome in January 1955, to have asked for information concerning the 1935 Treaty and to have received certain information from the Italian Government concerning the Treaty, as the CM states[88]. The evidence the CM offers to this effect is a short dispatch from M. Dumarçay to Paris, which appears to have been based on information obtained from the Italian Embassy in Tripoli, acting as the go-between in the transmission of the information from Rome[89]. According to M. Dumarçay, the Libyan Government was furnished with a photocopy of the 1935 accords and the Italian Embassy was instructed to:

> "... préciser que par suite de l'absence d'échange de ratifications ceux-ci n'étaient jamais entrés en vigueur."

Libya has no reason to question this report. But of course this was only scratching the surface of the matter. If the fact that instruments of ratification had not been exchanged definitively settled the question, the CM would not have made so much of the argument that the absence of the 1935 Treaty from the Annex I list was, as it contends, an explicit renunciation by Libya of the 1935 Treaty. Certainly one of the questions the Court will want to consider in this case is what significance this Treaty should be given in attributing territory between the two Parties. For in the context of a general settlement of their African problems, it was an agreement by the two States directly concerned as to the course of Libya's southern boundary, the agreed boundary never acquiring the status of an international conventional boundary for reasons entirely apart from the matter of the boundary itself. This point is taken up again in Part VI.

3.73 In the light of the above discussion based on an examination of the travaux and other evidence produced by Chad as well as by Libya with their Memorials, the false note struck by this passage, setting out the CM's conclusions regarding the 1955 negotiations, is striking:

---

[86] See, CM, p. 123, para. 82.

[87] See, para. 3.24, above.

[88] See, CM, p. 123, para. 83.

[89] See, CM, Annex 258.

> "Elles [the Libyan authorities] ont admis non seulement que les accords Laval-Mussolini n'avaient pas d'application, mais encore que la frontière entre la Libye et l'Afrique équatoriale française était bien déterminée par les actes internationaux en vigueur avant 1935, c'est à dire des [sic] conventions de 1899, 1902 et 1919[90]."

The evidence shows nothing of the kind. The Libyan negotiators, by the formula adopted in Article 3 of the 1955 Treaty, had achieved their purpose: to postpone the issue until they could examine these various agreements, including the 1935 Treaty. If an agreement appeared on the list, this did not mean it was en vigueur. By the same token, agreements not appearing on the list, which were en vigueur, might prove to be relevant - for the list was not "limitative" (exhaustive), as has been shown above[91].

SECTION 3. Contemporary Statements of the Libyan and French Governments; the Parliamentary Debates

3.74 The CM sets forth the widely-quoted statement of Prime Minister Ben Halim made not long after the 1955 Treaty was signed[92]; but it fails to mention either its source or the attention it was given during the ratification debates in the French parliament. These may be found in the LM[93]. What Mr. Ben Halim said (on 14 October 1955), as reported by Agence France-Presse, was this:

> "Le traité franco-libyen est un accord d'évacuation pur et simple qui n'engage en rien la Libye."

In his analysis of the texts of the accords submitted to the French Parliament during these debates, M. Jacques Soustelle questioned whether the Treaty had not already been violated, even before it took effect, in the light of Mr. Ben Halim's statement[94].

---

[90] CM, p. 139, para. 127.

[91] See, para. 3.13, et seq., above.

[92] See, CM, p. 107, para. 35.

[93] LM, para. 5.494, and Exhibit 71.

[94] Ibid. M. Soustelle was Governor-General of Algeria and a leading critic of the 1955 Treaty at the time.

3.75 The CM attempts to explain away this statement by suggesting that it was directed toward the French Government's proposals, rejected by Libya, regarding the reactivation of the French bases in Fezzan in time of crisis. But that was not the interpretation put on it in 1956 by M. Soustelle, whose interest in the matter was especially keen since he was Governor General of Algeria at the time the 1955 Treaty was signed. It would be difficult indeed to square Mr. Ben Halim's statement with the Chadian thesis that the 1955 Treaty fixed Libya's southern boundary. As the Libyan travaux bring out, the Libyan delegation was not prepared to reach agreement on this matter and, as a result, agreed to the Article 3 formula, which postponed the delimitation, establishing only the criteria to govern it: "actes internationaux en vigueur" at the time Libya became an independent State.

3.76 The CM refers to and annexes the "vives réactions" of M. Soustelle to the signed 1955 Treaty in a dispatch allegedly sent by him to the Minister of Foreign Affairs on 20 August 1955 - a document that is not a copy of the original, but a retyped version of extracts taken from it[95]. As to the provisions of Article 3 of the Treaty, the French Minister of the Interior followed the same line as M. Soustelle, expressing this opinion:

> "En ce qui concerne la frontière, je note que la limite n'a été définie que pour la partie Ghât-Toumo et que l'échange de lettres semble exclure que In-Ezzane soit comprise dans le territoire libyen[96]."

3.77 The discussion of the 1955 Treaty during the ratification debates in the French parliament is treated very briefly in the CM, in contrast to the quite full discussion in Libya's Memorial[97]. These debates are a prime source to consult for the French Government's views at the time as to the meaning and effect of Article 3.

3.78 The main burden of setting forth the French Government's views on the Treaty was shouldered by M. Maurice Faure, Minister of Foreign Affairs. In his several statements, the boundary with Algeria was the matter given principal attention. It will be recalled that after the 1955 Treaty was signed a serious doubt arose whether it would be ratified by France; indeed, the French

---

[95] See, CM, p. 109, para. 39; Annex 270.

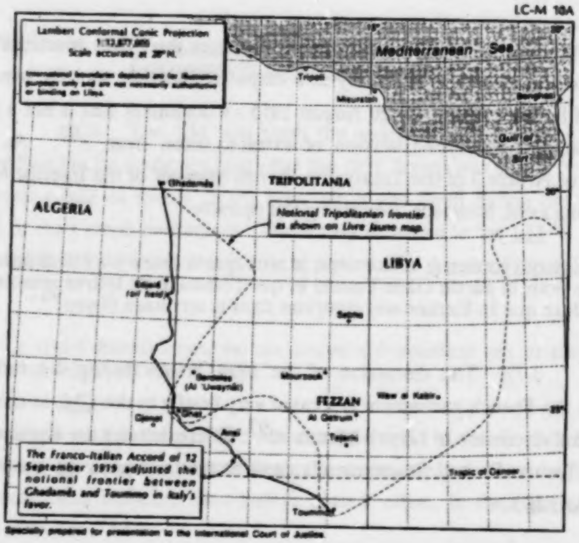
[96] CM, Annex 273.

[97] See, LM, paras. 5.491 - 5.503.

Government did not even present the instrument to the Assemblée Nationale until 13 November 1956, 15 months after signature. The taking effect of the 1955 Treaty - and hence the withdrawal of French troops from Fezzan by 30 November 1956, as the Treaty required - was linked to reaching agreement on rectification of Libya's boundary with Algeria, concerning which negotiations were then underway. This was the result of the Isorni amendment adopted on 29 November 1956, which provided that:

> "Les instruments de ratification seront déposés lorsque sera intervenu l'accord fixant la frontière entre le Royaume-Uni de Libye et l'Algérie[98]."

LC-M 10A


Lambert Conformal Conic Projection
1:12,877,000
Scale accurate at 28°N.
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.
15°
20°
Mediterranean Sea
Tripoli
Misratah
Benghazi
Gulf of Sirt
TRIPOLITANIA
Ghadamis
30°
ALGERIA
National Tripolitanian frontier as shown on Livre Jaune map.
LIBYA
Edjeleh (oil field)
Sebha
Serdeles (Al 'Uwaynat)
Mourzouk
Waw al Kabir
FEZZAN
25°
Ghat
Djanet
Al Qatrun
Arak
Tejerri
Tropic of Cancer
The Franco-Italian Accord of 12 September 1919 adjusted the national frontier between Ghadamis and Toummo in Italy's favor.
Toummo

Specially prepared for presentation to the International Court of Justice.

3.79 The CM tries to divert attention from the linkage by France of ratification of the 1955 Treaty to rectification of the Algerian boundary by asserting that the negotiations concerning the latter were instigated by Mr. Ben Halim and that they were brought about as a result of events that had materialized after signature of the 1955 Treaty. There is a modicum of truth in both points; but they do not alter the fact that the French Government exercised what in Libyan eyes at the time was a form of blackmail. One event that had occurred at the end of the year to make rectification of the Algerian boundary a matter of top priority for the French was the confirmation that the Edjelé oil field was a major commercial oil discovery (Map LC-M 10A)[99]. But a strong possibility of this had been known for some time. Even more important for France was the fact that the war with Algeria made it imperative to resolve the boundary between Libya and Algeria in order to reduce the likelihood of border incidents. On Libya's side there was the problem that it was not possible at the time for Libya, or any other Arab country for that matter, to negotiate with France over such a matter, given France's low status then in the Arab world, made even worse by the 1956 Suez crisis.

---

[98] See, LM, para. 5.499.

3.80 In a dispatch to the Foreign Office of 30 October 1956, Ambassador Graham reported on a conversation with Mr. Ben Halim concerning the serious situation caused by the failure of France to have ratified the 1955 Treaty[100]. This conversation took place before the French Government had placed the Treaty before the Parliament. In spite of French statements that they would withdraw from Fezzan on 30 November 1956, recent movements of men and military supplies by France seemed to belie these statements. Mr. Ben Halim predicted armed clashes if the French failed to withdraw on time. Mr. Graham reported that Mr. Ben Halim added the following:

> "Ben Halim continued that he believed that the French attitude over the withdrawal of their troops was connected with the delimitation of the border between the Fezzan and Algeria, which was about to begin. The French had hinted that if the Libyans were helpful over the frontier question they in their turn would make no difficulties over the evacuation. But this would be submitting to blackmail, and Libya held that the two questions were entirely separate. The frontier question must be dealt with on its merits[101]."

---

[99] The Edjelé oil field discovery is discussed in the LM, starting at para. 5.520.

[100] LM, British Archives Annex, p. 343. This is another example of Mr. Graham's meticulous reporting of such conversations to the Foreign Office in London. It is very strange, therefore, that there is no record of a report of the conversation he allegedly had with Mr. Ben Halim in 1955 concerning Aouzou, as reported by his French colleague M. Dumarçay. See, paras. 3.55-3.56, above.

[101] LM, British Archives Annex, p. 343.

3.81 To return to the French ratification debates - with this linkage in mind - the CM quotes from the French Government's Exposé des motifs accompanying the 1955 Treaty and includes a short extract from a statement of Foreign Minister Faure[102]. The point Chad seeks to bring out is the alleged "renunciation" and "definitive abandonment" by Libya of the 1935 Treaty. Aside from the fact that there is not a word in the 1955 Treaty about renunciation of the 1935 Treaty, this emphasis is curious. For the agreed formula of Article 3 based on "actes internationaux en vigueur" in 1951 would seem to have dealt satisfactorily with the problem from the French standpoint: the 1935 Treaty was not "en vigueur" on that date. Perhaps the French Government in these statements exaggerated the point for political purposes - to publicize the rejection of a line that the discredited Laval had agreed with Mussolini; and this might in part have compensated for what many Frenchmen saw as an ignominious withdrawal from Fezzan after the campaign of General Leclerc, in which France took so much pride. Nevertheless, the impression remains that the French Government, without putting the details of the southern boundary on the negotiating table, wanted to go one step further in getting rid of the 1935 Treaty. So this may have been an added reason why the Annex I list was put together by the French Government, in addition to trying to overcome the fact that the Franco-Italian 1902 and 1919 Accords were not "en vigueur" by placing them on the list as if they were in force in 1951.

3.82 The Exposé des motifs brings out another point as well, for it talked of "[c]ertains problèmes frontaliers nés de l'imprécision des textes internationaux"[103]. M. Faure emphasized the same point. In his statement on 22 November 1956 to the Assemblée Nationale, he expressed the Government's views as to the boundary question in this way:

> "J'en arrive à la question de la frontière. Le problème de sa fixation, nul ne l'ignore, a été particulièrement complexe dans cette région. Différents textes pouvaient, en effet, être invoqués, qui avaient plus ou moins une valeur juridique.
>
> Le problème vient d'être simplifié et mis au point. En ce qui concerne la frontière Sud, tout d'abord, la Libye renonce à se prévaloir des stipulations qui lui étaient favorables de l'accord de

---

[102] See, CM, p. 124, paras. 87 and 88.

[103] CM, p. 124, para. 87.

> 1935 connu sous le nom d'accord Laval-Mussolini. Nos droits sur le Tibesti sont, par conséquent, définitivement sanctionnés[104]."

3.83 Of course, this was a reflection of the familiar thesis of the Quai d'Orsay: that if the cloud resulting from the 1935 Treaty were removed the boundary would revert to the so-called 1899-1919 line. But M. Faure's statement was not accurate: (i) it is a considerable exaggeration to say that Libya "renounced" reliance on the provisions of the 1935 Treaty; and (ii) France's rights over the Tibesti were not "sanctionnés": they were left to be resolved under the criteria agreed in Article 3 - "actes internationaux en vigueur" in 1951. What M. Faure did not mention to the French Parliament - and surely he must have known - was that several other agreements had, by the same line of reasoning, been "renounced" under the Article 3 formula - including the Franco-Italian 1902 and 1919 Accords - since they were not "en vigueur" in 1951.

3.84 During the last day of Parliamentary debates (29 November 1956), M. Faure made a considerably longer statement about the boundaries with Libya[105]. He told a little story to explain the hold-up in the Algerian boundary negotiations (which ultimately became the 1956 Agreement); it concerned the fact that Libya was relying on a Swiss expert but that he had been unavailable when the French team arrived in June 1956. It may be this reference that misled Chad into claiming that in the 1955 negotiations Libya was surrounded by experts, including Swiss advisers - a completely incorrect assertion, as discussed earlier[106]. M. Faure then went on to say, in addressing the problem of boundaries, that -

> "... il se présente sous un aspect éminemment complexe pour deux raisons: une raison géographique et une raison diplomatique ou historique[107]."

3.85 His full statement on this matter is set out in the Libyan Memorial, so it will be largely paraphrased here or quoted in short excerpts[108]. Much of what he said related to the Algerian frontier, which was the principal

---

[104] LM, Exhibit 71, p. 5025. The French emphasis on Tibesti is once again noted. See, para. 1.16, et seq., above.

[105] See, LM, paras. 5.500 - 5.502, and citations set out there.

[106] See, para. 3.28 above.

[107] LM, Exhibit 77, p. 2365.

[108] See, LM, para. 5.501.

French preoccupation. He referred not only to the imprecision of the frontier with Libya as a result of the geography of the region and also because of the existing agreements:

> "... cette imprécision est aggravée parce qu'au point de vue historique et diplomatique on peut faire référence à plusieurs textes qui sont, sinon contradictoires, du moins successifs et imprécis, ce qui ouvre évidemment toute grande la porte à un contentieux et à un arbitrage international dont il est difficile de dire à l'avance dans quel sens il se prononcerait."

He held out hopes, however, that the 1955 Treaty would provide:

> "... d'abord un apaisement, ensuite un espoir."

He referred to an "apaisement" in respect to the Ghat-Toummo sector, dealt with in Annex I, which made reference to three points demanded by France. Also, he described as an "apaisement" the "abandon définitif" by Libya of the 1935 Treaty, which might otherwise have provided a basis for a claim in the Tibesti region. The "espoir", he suggested, concerned the Algerian boundary, where he hoped that French interests would prevail, particularly in respect to the Edjelé field and the airport at Maison-Rouge.

3.86 M. Faure's statements were not altogether clear. Most of the time they were directed at the Algerian segment of the boundary. But his admission that the various relevant agreements were contradictory, overlapping and imprecise is significant, as is his use of the word "apaisement" - hardly the word to describe a definitive fixing of the southern boundary in France's favour.

3.87 There is no mention in the statements made on behalf of the French Government during these debates that Article 3 of the 1955 Treaty was an implementation of G.A. Resolution 392(V) of 15 December 1950. It is to this subject that the next section turns; for the CM asserts that the Treaty carried out the delimitation called for by the Resolution.

SECTION 4. General Assembly Resolution 392(V) and the 1955 Treaty

3.88 In the conclusions to the CM that appear just before Chad's Submissions, it is said that:

> "Le Traité de 1955 avec la France était conforme à la Resolution 392(V) de l'Assemblée générale, qui avait recommandé que toute ligne frontalière incertaine soit réglée par négociation après l'indépendance de la Libye[109]."

It is to be noted that the paraphrase of Resolution 392(V) set out in this conclusion is inexact for the Resolution did not contain the words "toute ligne frontalière incertaine". The English text of the Resolution was as follows:

> "That the portion of its boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments, assisted on the request of either party by a third person to be selected by them or, failing their agreement, to be appointed by the Secretary General[110]."

The word "delimited" in the Resolution had been carefully chosen, having been substituted for "fixed" - the word employed in the initial draft tabled by the U.S. - and the attendant debates in Committee show that "delimited" was used in contrast to either "demarcated" or "rectified". This is fully set out in the LM[111]. The Resolution explicitly concerned only the portion of Libya's boundary with French territory not already delimited by international agreement.

3.89 The same assertion linking Resolution 392(V) and Article 3 of the 1955 Treaty appears a number of times in the CM, but what emerges from this discussion in the CM is both contradictory and incorrect. For, as the LM brings out[112], by voting in favour of Resolution 392(V), the French Government conceded that east of Toummo there was no Libyan southern boundary with French territory, which of course is exactly what the French Government told the French Parliament in 1935 in the Exposé des motifs accompanying the law subsequently enacted by the Parliament, by a resounding majority, to authorize ratification of the 1935 Treaty[113].

---

[109] CM, p. 375, Conclusion 1 (ii).

[110] LM, para. 5.393 and Exhibit 2. Emphasis added.

[111] See, LM, paras. 5.386 - 5.394.

[112] LM, paras. 5.386-5.394.

3.90 In Chapter I of the CM, which is a sort of tour d'horizon of the case, there appears this statement, following a correct quotation of the text of Resolution 392(V):

> "Il ne fut pas nécessaire de recourir à cette procédure pour ce qui est de la frontière méridionale de la Libye: des arrangements internationaux la délimitant existaient. Ceci est expressément reconnu par le [1955 Treaty] ...[114]."

In other words, according to Chad, only the boundary west of Toummo was to be "delimited" in accordance with Resolution 392(V). None of that boundary lies between Libya and Chad. So, in so far as the Libya-Chad boundary is concerned, Chad contends in this part of the CM that no part of that boundary required delimitation in accordance with the Resolution, since it had already been delimited by international agreement.

3.91 The CM again quotes the text of the Resolution in Part III, concluding this time the following (in sharp contradiction to what is asserted in Chapter I of the CM):

> "C'est donc un mandat spécifique de délimitation des frontières de la Libye d'une part, des territoires relevant de la souveraineté française d'autre part, qui fut confié aux deux Hautes Parties contractantes. La négociation du Traité du 10 août 1955 avait notamment pour objet de remplir ce mandat[115]."

It should be noted that nowhere in the text of the Treaty itself, the Exposé des motifs, or in the French parliamentary debates over ratification - what under Article 31 of the 1969 Vienna Convention on the Law of Treaties would be called its "context" - is any reference at all made to Resolution 392(V); and Chad makes no attempt to support this assertion except by repetition. And as noted in the previous paragraph, Chad contends elsewhere in the CM that what it claims to be the Libya-Chad boundary was not agreed in pursuance of the Resolution.

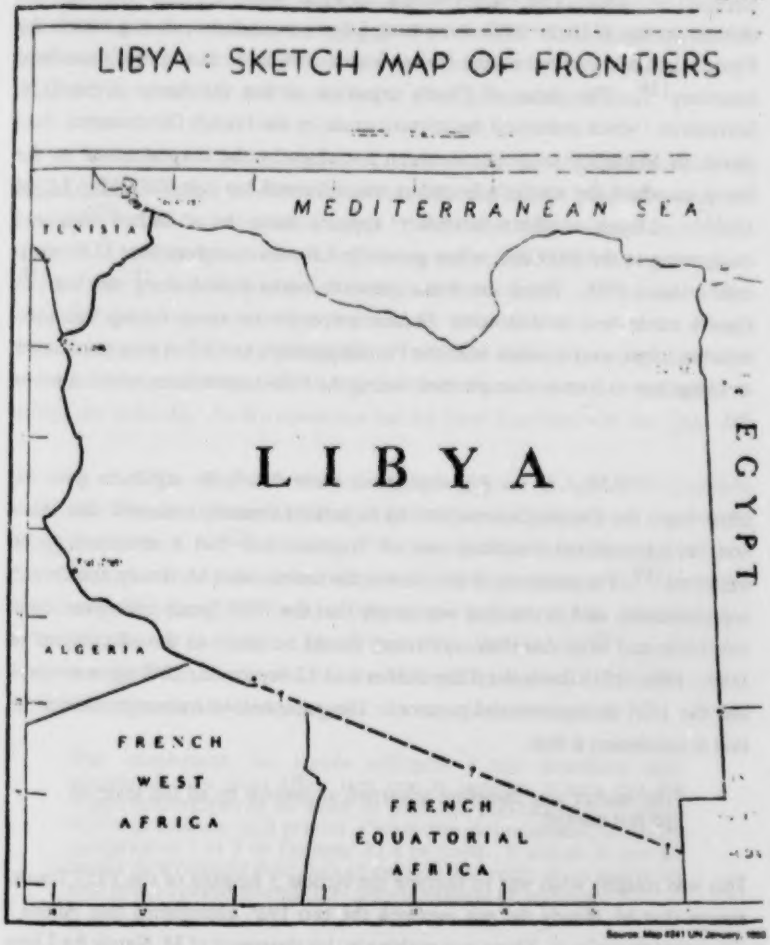
---

[113] See, LM, paras. 5.336 - 5.338.

[114] CM, pp. 30-31, para. 63.

[115] CM, p. 115, para. 55.

LC-M 11


LIBYA : SKETCH MAP OF FRONTIERS
MEDITERRANEAN SEA
TUNISIA
LIBYA
EGYPT
ALGERIA
FRENCH
WEST
AFRICA
FRENCH
EQUATORIAL
AFRICA

Source: Map 241 UN January, 1950

3.92 The subject comes up again when the CM discusses the debates in the U.N. in 1950 concerning Libya's boundaries, during which the French delegate clarified earlier French statements made as to Libya's southern boundary[116]. The thrust of Chad's argument is that the Study of the U.N. Secretariat - which contained the mistake made by the French Government - had shown its hesitation as to the southern boundary by the map attached to the Study, on which the southern boundary was indicated "en pointillé" (Map LC-M 11)[117]. Libya's southern boundary appears there as a dashed line, not conforming to the 1919 line, a line generally followed by subsequent U.N. maps until at least 1958. There are three question marks placed along this line[118]. Chad's contention is that, after France corrected its error during the U.N. debates, Libya was on notice as to the French position; and Libya was, thus, under an obligation to contest that position during the 1955 negotiations, which it never did.

3.93 As the LM explains in some detail, the argument goes the other way - the French Government by its actions formally conceded that there was no conventional boundary east of Toummo and that it remained to be delimited[119]. For purposes of the present discussion, what M. Naudy, the French representative, said at the time was simply that the 1935 Treaty had never come into force and that, therefore, reference should be made to the agreements of 1899 - 1902 - 1919 (both the 8 September and 12 September 1919 agreements) - and the 1924 declaration and protocol. The paraphrased transcript of what he said in conclusion is this:

> "The matter was therefore governed at present by all the texts he had just quoted."

This was roughly what was to become the Article 3 formula of the 1955 Treaty, except that M. Naudy did not overlook the two 1924 agreements that Annex I subsequently omitted. There was nothing in this statement of M. Naudy for Libya to take issue with in the subsequent 1955 negotiations. The further point is that the statement concerned only the southern boundary of Libya east of Toummo for it was as to that boundary the bévue had been made. Thus, in casting its vote in favour of Resolution 392(V), a vote that immediately followed M. Naudy's clarification, it was clear that France had in mind the southern frontier.

---

[116] See, CM, pp. 130-132, paras. 99-105.

[117] This map was reproduced in the LM as Map No. 87 (referred to there in para. 5.377); it also appears in the CM at p. 129.

[118] See, CM, p. 132, para. 105.

[119] See, LM, paras. 5.336-5.338.

3.94 Chad has introduced four documents of great interest in this regard. Regrettably, substantial portions of one, in the copy annexed, are illegible[120]. The first document, dated 11 February 1950, contains instructions from the Quai d'Orsay as to how to clarify the earlier French mis-statements as to this frontier[121]; and M. Naudy followed them to the letter. At the end of this dispatch (which was addressed to Ambassador Chauvel who headed the French U.N. Delegation), there is a paragraph to the effect that an "interpretation" that had been communicated over the phone from Paris was to be confirmed in writing the same day. Such a document has not been furnished with the CM.

3.95 The second document is a note of 16 April 1950 prepared within the French Ministry of Foreign Affairs for the guidance of the French delegation to the U.N.[122]. Its subject was entitled: "La question des frontières des anciennes colonies italiennes". Much of the note concerns the role of the U.N. in regard to fixing the frontiers of the former Italian colonies. As mentioned in the LM, France had taken a broad view of the U.N.'s role[123]. As this note brings out, the French view was that the U.N. had power both to delimit and to rectify these boundaries. The note goes on to say the following:

> "Par conséquent, les traités afférents à ces frontières sont suspendus dans leurs effets tant que la question n'aura pas été réglée conformément au traité de paix, aux possibilités qu'il ouvre et à la procédure qu'il prévoit, c'est-à-dire, actuellement, selon les paragraphes 2 et 3 de l'annexe XI à ce traité. Il suit de là que les traités de frontières dont il s'agit existant à la veille de la guerre ne sont plus à l'heure actuelle que provisoirement en vigueur[124]."

---

[120] CM, Annex 222.

[121] CM, Annex 220.

[122] See, CM, Annex 221.

[123] See, LM, para. 5.376 and fn. 438. This subject is discussed at length by Pelt, A: Libyan Independence and the United Nations, New Haven and London, Yale University Press, 1970, p. 417, et seq.

[124] CM, Annex 221.

This position of the French Government may explain the rather vague statement of M. Naudy set out earlier that the matter was governed "at present" by all the texts he had referred to.

3.96 This important note of instructions for the French delegation goes on to say that since these treaties "provisoirement en vigueur" might be confirmed or modified in application of Annex XI of the 1947 Peace Treaty, it must be admitted that:

> "... les frontières en cause ne sont pas 'déjà fixées par des arrangements internationaux' au sens de la résolution 289 -C- et qu'en conséquence la Commission intérimaire est compétente pour examiner la procédure de nature à mettre fin à cette difficulté ... ."

3.97 The note proceeds to examine each frontier in question: those with Tunisia, with Algeria and with the A.E.F. (east of Toummo). As to the latter, the situation from the French standpoint was described in terms that were almost precisely those used by M. Naudy in December 1950. It then turned to boundaries that France wished to modify - of relevance here, the Algerian boundary in the area of Ghat and Serdèles[125] (Map LC-M 10A referred to at paragraph 3.78 above). The note added "pour votre information strictement personnelle" that the French Government had, "pour le moment au moins", renounced raising any question as to the attachment of Ghadamès to Algeria or Tunisia.

3.98 The third document, much of which is totally illegible, is identified by the CM as instructions from the Quai d'Orsay to the French U.N. delegation dated 16 June 1950[126]. What can be made out from this document is that, unlike Egypt, the French Government did not want formally to present its territorial demands to the U.N. It wished to make its boundary requests appear as if they were directed at resolving factual issues rather than as claims to revise the boundary.

3.99 The last document in this group produced by Chad is the report of Ambassador Chauvel (at the U.N. mission) to Paris of 14 December

---

[125] As to this region, the note indicates that the local peoples did not wish to remain with Fezzan and were expected to make their aspirations known to the U.N. Commissioner.

[126] See, CM, Annex 222.

1950, the day before Resolution 392(V) was adopted[127]. M. Chauvel mentions that the draft to be voted on was based on the earlier U.S. resolution but with certain modifications offered by France[128]. Concerning the Resolution's text, he went on to observe that:

> "Le caractère très vague de ces formules, dont aucune interprétation claire n'a été à dessein fournie, apparait de nature à nous donner à l'avenir, le cas échéant, certaines libertés de manoeuvre[129]."

M. Chauvel reported that France's representative at the Interim Committee had said that:

> "... il ne voyait pas d'inconvénient majeur à voter le projet de résolution américain."

Having said this, France's spokesman (M. Naudy) was reported to have drawn attention to France's interest in *rectifying* the boundary in the Ghat-Serdèles region, which France reserved its rights to resolve in direct negotiations with Libya, and to have also recalled that the 1935 Treaty fixing the boundary between Toummo and Sudan had never entered into force:

> "... et qu'en conséquence cette frontière était actuellement celle existant antérieurement aux dits accords."

3.100 These interesting documents from the French diplomatic files bring out several points concerning Resolution 392(V):

- Unlike Egypt, the French Government did *not* want to put its cards on the table before the U.N.;

- The "actes internationaux" referred to by M. Naudy in his clarifying statement were at the time (1950) regarded by the French Government as only *provisionally* "en vigueur"; France had more ambitious objectives, such as annexing

---

[127] *See*, *CM*, Annex 223.

[128] *See*, in this regard, Pelt, *op cit.*, p. 420. (A copy of this page is attached as *Exhibit* LC-M 8.)

[129] *CM*, Annex 223.

Fezzan, and did not want to be restricted by any definitive boundary;

- France regarded the Resolution as harmless and sufficiently flexible to allow it the leeway it wanted;

- The only negotiations France's representative referred to at the U.N. concerned rectifications of the boundary in the Ghat-Serdèles region (subsequently dealt with by Annex I), and he did not regard this as falling under Resolution 392(V), but rather to be a matter for direct negotiations with a future Libyan Government[130].

3.101 The CM ignores this evidence, which Chad itself has introduced, as well as the plain meaning of Resolution 392(V) and the implications to be drawn from France's having voted for it. For the Resolution did not relate to the western boundary of Libya. There France wanted boundary rectifications, which fell outside the scope of Resolution 392(V) as the travaux show and as the French Government acknowledged before the U.N. By voting for Resolution 392(V), France conceded that the part of the southern boundary that had not already been delimited was to be delimited by negotiations with

---

[130] The CM, at p. 120, para. 72, tries to dodge the fact that the provisions of Annex I concerning the Ghat-Toummo sector related to a rectification of the boundary. It claims that it was an "interprétation authentique" of the 12 September 1919 Accord. But, of course, Libya was not a party to that Accord and could not have interpreted it. Moreover, as is demonstrated in the LM, para. 5.488, et seq., Annex I in fact changed the boundary. The CM gives no support for its assertion that "La précision [of Annex I] marque bien la volonté de délimitation et non d'ajustement ou de rectification". The travaux relating to Resolution 392(V) demonstrate that France considered the changes in that sector to be rectifications outside the scope of the Resolution. Finally, this Accord (12 September 1919) was no longer "en vigueur" for it had not been notified by France under the 1947 Peace Treaty.

Libya when it achieved its independence[131]. It has been demonstrated above, and in considerable detail in the LM, that Libya's southern boundary was never the subject of any negotiations between Libya and France, for the French Government did not want to put the issue of that boundary on the negotiating table. As a result, the Article 3 formula was adopted. It served France's purpose, for it avoided any direct discussion with Libya about the southern boundary. It served Libya's purpose, because it postponed dealing with the issue whose resolution was rejected by Mr. Ben Halim as a condition of the Treaty's entering into force. He regarded the Treaty as concerning, purely and simply, the evacuation of Fezzan by the French[132].

3.102 It was suggested earlier in this Section that Chad's discussion of the connection between Resolution 392(V) and the 1955 Treaty is contradictory and incorrect[133]. This can be demonstrated, drawing on the above analysis. The CM repeatedly asserts that a principal object of the Treaty was to carry out the mandate of Resolution 392(V); but then it also says it was not necessary to resort to these procedures (to negotiate to delimit the boundary) in respect to the southern boundary because the prior international arrangements had already accomplished such a delimitation[134]. Yet it is apparent that it was only the southern boundary with which the Resolution could have been concerned: the western boundary had already been delimited and was to be rectified, which the U.N. travaux relating to the Resolution clearly excluded from its scope. Chad's evidence reveals that the French Government in 1950 considered these international arrangements to be only "provisoirement en vigueur", and sought to modify them, but to do so more subtly than the Egyptians, who had set out before the U.N. their claims in detail.

---

[131] Such an interpretation of Resolution 392(V) was confirmed in a statement of the "rapporteur pour avis" (M. Schneider) on 26 May 1955 during the debates before the Assemblée de l'Union Française concerning France's position in Fezzan and the negotiations with Libya about to restart. In referring to the British - Libyan manoeuvres of July 1955 in the area of southern Cyrenaica, M. Schneider said:

> "Il semble que ces manifestations d'intentions confirment la manoeuvre diplomatique ayant conduit à la résolution n° 392(V) des Nations Unies, citée par le rapport de votre commission des relations extérieures, dont il ne vous échappera pas que la réduction [sic] vise implicitement à remettre en cause notre frontière entre l'Afrique équatoriale française et la Libye, à hauteur du Borkou - Ennedi - Tibesti." (LM, Exhibit 72, p. 567.)

M. Schneider (formerly Colonel Schneider) was one of the most informed Frenchmen on the subject. This statement is directly contrary to the assertions in the CM as to the purpose of the Resolution.

[132] See, para. 3.74, et seq., above.

[133] See, para. 3.89, above.

[134] See, para. 3.90, above.

3.103 Nevertheless, the CM tries to make Libya the scapegoat. In its Chapter V, the CM characterizes Libya's silence and its failure to contest France's declarations to the U.N. concerning the southern boundary as constituting an estoppel, including even the silence of the Libyan authorities while Libya was on its way to becoming independent[135]. The CM asserts that:

> "L'absence d'action en ce sens peut être considérée comme la preuve d'une absence de désaccord avec la définition et l'interprétation françaises des textes applicables."

When one examines what M. Naudy said to the U.N. in order to clarify France's position in the light of the earlier French bévue, it is apparent that he said nothing to take exception to[136]. Even if he had, immediately after he made his statement Resolution 392(V) was adopted, supported by France. It called upon France to negotiate with Libya, after it had achieved independence, to delimit its yet undelimited boundaries. If the French Government had believed that the southern boundary had already been delimited, it would have opposed this Resolution. Once the Resolution had been approved, there was no cause for Libya to object to any French statements made prior thereto. The matter had been resolved by the Resolution; the boundary was to be delimited by negotiations between France and Libya, after it gained its independence. The 1955 negotiations were not such negotiations, for neither Party saw them as negotiations about the delimitation of the southern boundary. For France, this was precisely the topic to be avoided; for Libya, the topic was premature.

---

[135] See, CM, pp. 237-238, paras. 113-114.

[136] Who was there to object at the time, in any event? Libya was not yet independent; Italy was not yet a member of the U.N. and had no special interest in this boundary after its renunciation of its colonial interests in Africa in the 1947 Peace Treaty.

SECTION 5. Aftermath of the Signing of the 1955 Treaty

3.104 The CM develops several lines of argument, concerning the intention of the parties as expressed in Article 3 of the 1955 Treaty, built around Libya's conduct following the signing of the 1955 Treaty:

- First, that Libya indicated its satisfaction over the southern boundary allegedly delimited by Article 3 by failing to object to it or invoking the procedures set out in Resolution 392(V) for resolving disputes;

- Second, that the contrast between the handling of the southern boundary in Article 3 and the Ghat-Toummo sector in Annex I revealed Libya's satisfaction with a simple reference to a line rather than a more precise delimitation; and

- Third, that had Libya not been satisfied with the southern boundary claimed to have emerged from Article 3, it would have raised the question in the subsequent 1956 negotiations to rectify the boundary with Algeria.

Each of these arguments will be considered in turn.

3.105 The first argument has two components: (i) Libya's failure during the delimitation negotiations to express its dissatisfaction with the southern boundary claimed to have resulted from Article 3; and (ii) its failure to have invoked the disputes procedures of the Resolution. The second point is expressed this way in the CM:

> "En évitant de recourir à une telle procédure, le gouvernement libyen marquait définitivement son accord quant aux résultats de la procédure de délimitation prévue par l'Assemblée générale des Nations Unies[137]."

Both components assume that the southern boundary was established in Article 3 as a result of delimitation negotiations. This was clearly not so: there were no such negotiations; and elsewhere the CM so admits, asserting that they were not necessary[138].

---

[137] CM, p. 138, para. 123.

3.106 The second argument, based on the contrast between the handling of the Ghat-Toummo sector (dealt with specifically in Annex I) and the southern sector (dealt with by reference only to "actes internationaux en vigueur"), is expressed in these words in the CM:

> "En d'autres termes, les Parties considèrèrent [sic] comme suffisante la délimitation telle qu'elle est prévue par les textes internationaux de référence sauf là où elles estimèrent indispensable d'ajouter des précisions[139]."

Chad has made no attempt in the CM to prove that the parties considered "comme suffisante" the "delimitation" of the southern boundary, and the travaux show quite the reverse. France emphatically did not want to discuss the southern boundary other than by general reference to certain treaties "en vigueur" in 1951. This was quite satisfactory to Libya, whose negotiators were not prepared at the time to take up such a complex question and insisted that it be postponed until later. Thus, there were no boundary negotiations and no delimitations of any boundary east of Toummo. However, the Ghat-Toummo sector was a different matter. It involved a rectification of the boundary, which France insisted on as a condition of the evacuation of Fezzan - just as France was subsequently to insist on rectification of the Algerian boundary between Ghadamès and Ghat. It was the rectification of this sector, by picking three points through which the boundary should pass, that was the sole subject of boundary negotiations during the July-August 1955 sessions leading to the signing of the 1955 Treaty. In addition to France's wish to rectify this boundary between Ghat and Toummo, the reference in Annex I to three points through which the boundary should pass helped to resolve France's dilemma resulting from the fact that the 1919 Accord (12 September) was no longer "en vigueur".

3.107 The third argument relates to the 1956 negotiations to rectify the boundary with Algeria between Ghadamès and Ghat, resulting from what Chad euphemistically calls "la délimitation complémentaire", and which the

---

[138] See, para. 3.90, above.

[139] CM, p. 117, para. 60.

CM also describes as concerning "précisions" rather than rectifications[140]. It is stated this way:

> "Au surplus, la France suscita la réouverture de négociations[141] en vue de fixer plus précisément la frontière entre l'Algérie et la Libye. Celle-ci n'en profita nullement pour provoquer parallèlement de nouvelles négociations sur sa frontière méridionale, ce qu'elle n'aurait pas manqué de faire si elle avait nourri un doute sur la validité du tracé confirmé par le Traité de 1955[142]."

Both the basic premise of this third argument and the factual assumption underlying it are incorrect.

3.108 Libya would have had no reason to suggest at that time that "new negotiations" be opened as to its southern boundary. It considered that there had not yet been any such negotiations - they had yet to take place on the basis of the Article 3 formula. So if Libya did not request a reopening of negotiations it was no indication of its satisfaction with the southern boundary - there was no agreed southern boundary in Libya's view; and its silence certainly acted as no preclusion to raise the matter later.

3.109 But why did not Libya press France for negotiations on the southern boundary? The answer is two-fold: (i) Libya did raise the question of the southern boundary during the 1956 negotiations and France refused to discuss it; and (ii) the general situation at the time made it impossible for Libya to consider taking up the delimitation of its southern boundary with France. These two points will now be discussed.

3.110 The record Libya has of the 1956 negotiations establishes that at the opening meeting between the Libyan and French negotiating teams on 17 November 1956, the Swiss expert advising Libya[143] suggested -

---

[140] See, CM, pp. 118-119, paras. 64 and 67.

[141] This admission - that France was the instigator of the negotiations to rectify the Algerian boundary - contrasts with the repeated assertion in the CM that it was Mr. Ben Halim who requested the opening of these discussions. See, for example, CM, p. 117, para. 62.

[142] CM, p. 33, para. 71; see, also, p. 138, para. 125.

[143] See, para. 3.28, above, where it is explained that it was during the 1956, not the 1955, negotiations that Libya was assisted by a Swiss expert.

> "... that the two sides began with a general review of the whole frontier, to include the agreements and treaties to be resorted to in this regard[144]."

Libya's record of the meeting indicates that the French reply was the following:

> "But the head of the French delegation expressed the view of his Government that study should be confined only to the frontier between Gadamès and Ghat, or between Ghat and Gadamès. He supported this view by the fact that some other frontier areas had been ironed out in the past under international agreements concluded between France and the States who governed Libya, like Turkey and Italy, such as the 1910 and 1919 agreements and the agreement concluded with the Libyan Government in 1955[145]."

The following exchange then took place:

> "But the specialist replied that to facilitate everybody's task we should first make a general review of the frontier as a whole, followed by a discussion of the Ghat-Gadamès issue afterwards.
>
> The head of the French delegation repeated his opinion that discussion should be confined to the area between Gadamès and Ghat, concentrating all his concern upon this.
>
> The head of the Libyan side [said] that there had to be an exchange of views, and that we should review the frontier as a whole."

3.111 The negotiations resumed on 20 November 1956. The following entry appears in the Libyan record of that day:

> "The head of the French delegation replied that the members of the delegation had come specifically to discuss the frontier between Gadamès and Ghat. The delegation was not authorised to discuss the rest of the frontier. Mr. Omar Al-Barouni made the reservation that the Libyan delegation was unable to discuss only the Gadamès-Ghat sector; however, he accepted the French delegation's proposals on the basis that the Libyan delegation be given adequate time to study them along with the Minister."

3.112 From this account, it is apparent that there is no factual foundation for the third argument of Chad. Libya attempted to open up discussion of the entire frontier - on the south as well as on the west - and was rebuffed by France. There is another point to be made here. An examination of the record of these 1956 negotiations shows the striking difference between them and the 1955 sessions. In 1956, the French produced maps and detailed geographical points were discussed, although they only concerned Libya's western boundary; in 1955, the French showed no interest in any detailed examination of the southern boundary, and they produced no maps or copies of the agreements supposedly "en vigueur" in 1951.

---

[144] The pertinent pages of Libya's unilateral record of the 1956 negotiations are annexed hereto as Exhibit LC-M 9, together with English translation.

[145] The following comment appears written in on the side of this translated excerpt: "perhaps due to shortness of time; any other explanation?".

3.113 It was mentioned in paragraph 3.109 above that there was a two-fold answer to the third argument; the second part of the answer concerns why the situation prevailing after 1955 made it impossible for Libya and France to contemplate negotiating the delimitation of the southern boundary. There are a number of reasons why France and Libya never sat down to negotiate the delimitation of Libya's southern boundary. First, until the very end of 1956, it was not at all certain that France would ratify the 1955 Treaty. Second, as just seen above, when Libya brought up the matter in 1956 it was quickly rebuffed by the French: they did not want to talk about that sector of the boundary. Third, the Suez crisis had erupted in 1956, making France's relationship with the Arab world even worse than it already was, and making it virtually impossible for Libya to negotiate on any such matter with France in the light of Arab public opinion. Fourth, the war between France and Algeria had just started (in 1954), and until it ended in 1962 the atmosphere was anything but conducive to any further negotiations between Libya and France. The situation was made even more tense with Libya's recognition of the F.L.N., the Algerian "Front de Libération Nationale". Fifth, for the next few years after the 1956 Agreement there were serious incidents along the Algerian frontier and in the Ghat-Toummo sector between Libya and France[146]. The southern frontier was hardly on the mind of either Government, with so many other problems to resolve. Thus, Chad had become an independent State (in 1960) before conditions were such that Libya and France could fruitfully have sat down to fulfil the mandate of Resolution 392(V). It is apparent that the French Government was content to let things stand as they were. This was yet another demonstration of the French strategy not to raise the southern boundary issue but to hope that the solution it sought would gradually evolve in the course of time.

---

[146] Exhibit LC-M 10 hereto contains a number of documents describing these incidents, largely from the British viewpoint.

CHAPTER II. THE INVALIDITY OF CHAD'S FIRST THEORY UNDER ARTICLE 3

3.114 There are two main components to the first theory, which is summarized above at paragraph 3.01: (i) that Article 3 of the 1955 Treaty itself determined with precision the boundary line between Libya and Chad; and (ii) that it did so by renvoi to the line resulting from the "actes internationaux" listed in Annex I of the Treaty.

3.115 In the previous Chapter the provisions of Article 3 and Annex I have been examined, and the travaux already extensively covered in the LM have been reviewed again in the light of what the CM has had to say on the subject. From this examination, it can be seen straight off that the first theory, which depends on the proposition that Article 3 actually determined or fixed the boundary with precision, is refuted by the text of Article 3 itself. As already seen above, the action contemplated to be taken by Libya and France under Article 3 was not to decide or fix a boundary but to recognize the boundary situation as it existed at the moment of Libya's independence. It set the criteria for determining that situation: the boundaries were to be those resulting ("celles qui résultent") from the "actes internationaux en vigueur" on the day Libya became an independent State, that is on 24 December 1951. The delimitation formula was to be a strict application of uti possidetis juris.

3.116 There were several frontiers that fell within the scope of Article 3. Libya's boundary with Tunisia had been fixed by Treaty in 1910 and subsequently demarcated. Similarly, the Franco-Italian Accord of 12 September 1919 had delimited the Algerian boundary from Ghadamès southward. The boundary line there went only as far as Toummo. France sought to rectify this boundary, as it informed the U.N. in 1949. It was a boundary of a far higher order of importance for France, for Algeria was then part of metropolitan France; so it concerned a boundary with France itself, not just with its possessions or colonies. East of Toummo, a third situation prevailed in December 1951: there was no agreed boundary at all. Two attempts to delimit this part of Libya's frontiers in the past had failed[147]; and one had succeeded, only to be aborted for reasons having nothing to do with the boundary agreement reached[148].

3.117 The choice of words in Article 3 ("recognize") was well suited to these different boundary situations with which Libya and France were faced. The 1910 Libya-Tunisia boundary had been fixed by treaty and that treaty was "en vigueur" in December 1951. The Algerian sector of Libya's boundary had also been fixed by treaty, in 1919, but it was a boundary France wished to modify. The parties would also have had to determine whether this 1919 Accord was "en vigueur". According to the CM, that Accord was not then in force, for France had intentionally failed to notify it to Italy under the terms of Article 44 of the 1947 Italian Peace Treaty.

3.118 There is no indication in any travaux Libya is aware of that the negotiators in 1955 discussed the fact that the 1919 Accord between France and Italy had been allowed to lapse; the only treaty mentioned by the French as not being "en vigueur" was the 1935 Treaty. However, it did not matter much to the French because, between Ghadamès and Ghat, the French Government wanted to rectify the boundary - and this was accomplished by the 1956 Agreement. The 1919 boundary between Ghat and Toummo was also not satisfactory to France; so Annex I specifically designated three points through which the boundary should pass. As the LM explained, this modified that sector of the boundary. But this provision in Annex I had another effect as well; it rendered it unimportant whether the 1919 Accord was "en vigueur" for it accomplished a sufficiently precise indication of where the boundary should pass; and it provided for its demarcation by a boundary commission. Thus, for this piece of the boundary the 1955 Treaty itself did indeed accomplish the delimitation - not because of the Article 3 formula, however, but via the specific indication of the course the line should take set out in Annex I, in rectification of the 1919 boundary.

3.119 As to Libya's southern frontier, the French negotiators had initially approached this question with confidence. If Libya would agree to the general formula of Article 3, then the French had achieved their aim for, at least until early August 1955, they had faith in their thesis that a conventional boundary did indeed emerge from international agreements in force in December 1951, and that this formula would exclude the 1935 Treaty line since ratifications of the Treaty had not been exchanged and in 1938 the Italian Government had announced its intention not to do so. This was essentially what is now Chad's second theory, minus the ingredient added in the CM based on claimed French effectivités.

---

[147] In 1911, the delimitation negotiations scheduled to take place between the Ottoman Empire and France were cancelled in the wake of the Treaty of Ouchy; World War I put a halt to the negotiations scheduled to take place between Italy and France starting in mid-1914.

[148] This was the 1935 Treaty.

3.120 Under Chad's first theory, the CM contends that Article 3 concerned not the provisions of the "actes internationaux en vigueur" in 1951 but rather a precise line. No words of Article 3 support such an argument; and it is destroyed by the travaux. It is beyond belief that Libya would have agreed to a line when it did not know where that line was located and when France did not wish to discuss this sort of detail and, during the negotiations, failed even to produce a map on which the line appeared.

3.121 In January 1955, as Chad's own evidence shows[149], the parties had agreed to abide by the general provisions of these texts ("s'en tenir aux stipulations générales des textes internationaux en vigueur à la date de la création de l'Etat libyen"). That hardly was a reference just to a line. The same evidence reveals that in August 1955 "[l]e règlement de cette question est précisé par l'article 3 du Traité et par son Annexe I" - obviously a reference to the Annex I list that suddenly was added to the French draft of Annex I in August, just before final agreement; but there was no disavowal of the general principle of abiding by the "stipulations générales" of the agreements listed. As the contemporaneous Foreign Office records confirm, the chief French negotiator, Ambassador Dejean, felt he had the southern boundary problem wrapped up at the end of July - before the appearance of the Annex I list. This is what he told his British colleagues. Thus, he had exhibited full confidence, before the Annex I list was produced, that when the parties sat down to examine the provisions of these texts, an agreed boundary would emerge for the southern sector. He was evidently following the advice of the Governor General of the A.E.F.: to discuss things in general terms and not to broach any specific lines or to call into question the effect of these agreements.

---

[149] CM, Annex 269. Emphasis added.

3.122 Adding the Annex I list to the 1955 Treaty did not suddenly insert a reference to a line rather than to the "stipulations générales" of the listed agreements. It was also not an agreement that they were "en vigueur" if they were not. A plausible reason why the list appeared at the last minute might be that Foreign Minister Ben Halim had turned to Ambassador Dejean and simply said: "you have repeatedly mentioned 'actes internationaux en vigueur' that we must examine to find a boundary, but you have not produced any. What are they? Why not add a list to Annex I?" And M. Dejean obliged. Today, before the Court, the Parties (although now Chad rather than France) are turning to this list for the first time. What do they find? A good many surprises. Agreements carelessly omitted. "Actes" on the list that should not have been, for they were not "en vigueur" in 1951. Above all, they find that no agreed boundary for southern Libya would result from the "actes" on the list for the parties to "recognize". So the effect of Article 3 was to recognize one essential fact about Libya's southern boundary - that there was no existing boundary based on treaty, and that it would have to be settled by negotiation in accordance with G.A. Resolution 392 (V).

3.123 Aside from the travaux just mentioned, which reject the idea of a reference to a line rather than to "stipulations générales" ("general wording" is the way the French term is referred to in the Libyan travaux), the travaux on the Libyan side, reinforced by the British record of what each side was reporting to the British Government at the time, prove that the Libyans were not prepared to accept agreement on the southern boundary as a condition of signing the 1955 Treaty or before they had had time to study the matter. The travaux also reveal that no negotiations over such a boundary ever occurred; no line was shown or drawn on a map during their discussions to illustrate France's position; no texts of agreements said to be "en vigueur" were exchanged or examined. The matter was simply postponed. In doing so, Libya risked nothing. If a conventional boundary existed in 1951, so be it. That is in fact Libya's position today, although it believes the Court cannot reach such a conclusion. For the French, it was in their opinion a victory, for they were convinced of their boundary thesis - until possibly early August and the discovery that the 1935 Treaty was not the only key agreement not "en vigueur" in 1951. In any event, it seems highly likely that the French reasoning went like this: how would the Libyans ever know? Given time to let things settle down after the evacuation of Fezzan, the Libyans in all probability would eventually agree to accept the 1919 line. For the reasons given above, however, that occasion never occurred[150]. Putting aside the speculation and guesswork, Libya respectfully draws the attention of the Court to the fact that it is for Chad to produce the evidence as to what occurred and why. For Chad bears the burden to prove the existence of a conventional boundary, one based on its first theory if the other theories do not hold water.

3.124 The supposed renvoi in Article 3 is the key to Chad's first theory; and the essential point about the renvoi, under the theory, is that it was to a line not to the general provisions of the "actes internationaux en vigueur" in 1951. It has already been seen that the text of Article 3 gives no support at all to the suggestion that the parties so intended; and the travaux show they did not so intend. But taking the renvoi theory set out in the CM at face value, the renvoi was to which line? True southeast, as under the 1899 Declaration (ending at 15°35'N)? East-southeast, as on the map referred to in the 1902 Accord - the Non-Annexed Map (ending at 19°N)? Or the 1919 Line (19°30'N)? Over and over again, the CM insists these were the same line; yet demonstrably they were not. So the renvoi appears to depend in the mind of Chad on establishing that these lines are identical. On this ground alone the theory falls apart. This fact is dealt with further in the following Part, which addresses Chad's second theory.

3.125 The CM has anticipated this objection; it advances the argument that the principle lex posterior priori derogat should be applied in the event of conflict[151]. (One can sympathize with Prime Minister Ben Halim's insistence that delimitation be postponed until Libya had had a chance to prepare itself!) This principle would lead to the latest adopted line of the three lines - the 1919 line - the line (south-southeast from the Tropic of Cancer) described in Chad's Submissions. The virtue of the renvoi theory is that it would then vault clear over the problem that the Anglo-French 1919 Convention was not opposable to Italy - and was vigorously rejected by the Italian Government up until 1935. But this would require Chad to prove that Article 3 of the 1955 Treaty was intended to mean this - in Libya's view an insurmountable obstacle, particularly in the light of the travaux.

3.126 As a bare minimum, to sustain Chad's theory of the effect of the renvoi to the 1919 Convention - regardless of whether it was a boundary or not or whether or not it was opposable to Italy -, it is necessary for Chad to prove that such a result was placed squarely on the negotiating table and discussed. It was not; and it was purposely not done because the French side did not wish to open up the vulnerability of the French thesis to examination. The travaux make this clear beyond any reasonable doubt.

---

[150] See, para. 3.113, above.

[151] See, para. 4.197, below.

CHAPTER III. CONCLUSIONS

3.127 Chad's first theory is directly controverted by the text of Article 3. The intended renvoi in that Article was not to a line but to the general provisions of treaties "en vigueur" in 1951. The travaux establish this point, and it is confirmed by the British records. Furthermore, the agreements listed in Annex I would produce three different lines, none of them boundary lines.

3.128 The whole French strategy for dealing with the southern boundary was not to discuss a line but to make a general reference to the agreements and accords in force in 1951. It was intended to be the strict application of uti possidetis juris. This was the strategy recommended in May 1955 by the A.E.F.; and the travaux show that the French negotiators accepted this advice.

3.129 Had France really believed that Article 3 and Annex I in fact carried out a delimitation of the southern boundary as called for by Resolution 392(V), the French Government would not have failed to have the 1955 Treaty registered under Article 102 of the U.N. Charter[152]. The contrast between the French Government's action to have the 1956 Agreement promptly registered and its indifference over the registration of the 1955 Treaty is meaningful. For the 1956 Treaty did fix a boundary - it rectified the 1919 western boundary of Libya. The 1955 Treaty only fixed the course of the boundary between Ghat and Toummo - also a rectification - by referring to three points through which the boundary should pass.

3.130 It was the 1956 boundary that was by far the most important boundary sector for a number of reasons: (i) it concerned Algeria - and hence, at the time, metropolitan France; (ii) the war with Algeria had begun and, thus, this boundary was especially critical; (iii) the Edjelé oil fields had just been established as capable of producing substantial commercial quantities of oil, and this involved a part of the boundary with Algeria between Ghadamès and Ghat. Thus, the French Government promptly registered the 1956 Agreement with the U.N. under Article 102. It is not plausible to believe that the French Government would have neglected to do likewise with the 1955 Treaty had it in fact fixed the boundary east of Toummo. Not only did this omission occur in 1955 - and Chad suggests that this sort of slip-up was not unusual[153] - but when the French Government was reminded by the U.N. Secretariat in 1972 that the 1955 Treaty had not been registered, once again France took no action[154]. The CM fails to mention that fact.

---

[152] From the evidence gleaned by Libya in the course of its researches into the preparation of this Counter-Memorial, it is clear that, if the Chad view of Article 3 is correct, the terms of Article 3 were agreed in error.

---

[153] See, CM, p. 95 para. 6.

[154] See, LM, para. 5.506. One explanation of France's failure might be that the French Government, being aware that various key "actes internationaux", both on and off the Annex I list, were not en vigueur, feared that in registering the 1955 Treaty under Article 102 this fact might be uncovered.

PART IV

CHAD'S SECOND THEORY IS RULED OUT BY THE AGREEMENTS THEMSELVES AND BY ARTICLE 3 OF THE 1955 TREATY

CHAPTER I. INTRODUCTION

4.01 According to the CM, Chad's second theory stands on its own feet and does not depend on the 1955 Treaty, although it leads to the exact same line as the first theory - it constitutes "un titre autonome"[1].

4.02 The second theory runs as follows[2]:

- The 1899 Declaration contained provisions concerning boundary delimitation; and any doubt as to the meaning of these provisions regarding the line intended is resolved by the travaux and by the conduct of the parties;
- These indicate that the direction of the southeast line described in Article 3 of the Declaration was intended to meet 24°E longitude "nettement au nord" of 15°N latitude;
- In the 1902 Accord, Italy accepted the 1899 Anglo-French "partage" not by reference to the 1899 Declaration's text but to the map "qui y était jointe";
- Since Italy thus knew of the details of the 1899 line, that line - completed by the Tripolitanian boundary appearing on that map - became opposable to Italy;
- The Anglo-French Convention of 1919 contained a written description of the 1899 line as it appeared on the 1899 map and as it had been accepted by Italy in 1902;

---

[1] CM, p. 377, para. 5.

[2] See, CM, p. 375, Conclusion 1 (vii-xii).

- The 1899 Declaration delimited only spheres of influence; however, starting in 1913, France exercised its sovereign authority in a manner sufficient to permit it legally to consolidate its title of sovereignty over territory up to the line defining the respective spheres of influence of Great Britain and France;

- Thus, the agreed line of 1899, accepted by Italy in 1902, had by 1919 become an international boundary opposable to Italy;

- By signing the 1935 Treaty, Italy confirmed French sovereignty up to the 1919 line.

4.03 The exposition of Chad's second theory is to be found principally, though not solely, in Chapter IV of the CM. As a result, the sequence of that Chapter will generally be followed here, although it will be necessary to make reference to other parts of the CM from time to time.

4.04 If Chad's first theory has the advantage of being simple - for under it, Article 3 of the 1955 Treaty is construed to establish the precise line whose status as a boundary line and whose opposability to the parties are thereby automatically resolved - Chad's second theory suffers from its complexity. The CM describes the 1955 Treaty as presenting "un caractère doublement confirmatif": both as to the line resulting from the agreements and as to the opposability of the agreements to Libya[3]. Whereas under the first theory, Article 3 of the 1955 Treaty itself accomplished that deed, under the second theory, it is the agreements that accomplish it, and the Treaty's role is "confirmatif". Nevertheless, although the second theory may have been constructed to stand on its own feet without regard to Article 3, as between Libya and France (and now Chad), Article 3 of the 1955 Treaty is nevertheless controlling: if any boundary opposable to the parties resulted from previous agreements, it was only "recognized", under Article 3, if those agreements were "en vigueur" on the critical date, 24 December 1951. That the 1955 Treaty is said to play a confirmative role under Chad's second theory does not permit the theory to escape from that overriding condition of Article 3 - that the agreements on which the claimed conventional boundary is based must have been in force on the critical date. It is for Chad to prove that these agreements meet this criterion.

---

[3] CM, p. 143, para. 5.

4.05 The CM appears to attempt just such an escape from this overriding condition of Article 3, for it declares that under the provisions of Article 3 Libya and France -

> "... reconnaissent que les actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye et définissant le tracé de la frontière entre les deux pays sont les textes suivants ...[4]."

Then follow the six agreements listed in Annex I of the Treaty. But it must be noted that Article 3 did not say "les textes suivants" but rather "tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annexe I)", which is quite different. The interpretation suggested in the above passage is a distortion of the text in two other respects, as well. In signing the Treaty, Libya did not thereby accept that those listed agreements were "en vigueur" in 1951; it agreed merely that this was a criterion those agreements would have to meet. Nor did Libya accept that a boundary did necessarily exist, based on those treaties. Had a boundary existed there would have been little point in Resolution 392(V) calling upon France and Libya to negotiate a boundary. And, given that France was not prepared to disclose to Libya any boundary line, Libya was in effect agreeing only to examine the double question - does a boundary exist, and, if so, where? - on the basis of the enumerated treaties and any other such "actes internationaux", provided they were "en vigueur" on the critical date. As the CM suggests, it was "la consécration explicite de 'l'uti possidetis de 1951'"[5] - but the explicit consecration of uti possidetis juris only.

4.06 If Chad seriously maintains that the effect of Article 3 was to accept as in force the agreements on the Annex I list, whether or not they were then in force, a serious question would arise as to the validity of Article 3 and Annex I of the Treaty. For the CM has disclosed that two of the agreements on the list were not in fact in force in 1951[6]. Thus, Libya would have signed the Treaty, if it had such a meaning, on the basis of misrepresentations by France or of a fundamental mistake.

---

[4] CM, p. 142, para. 1. Emphasis added.

[5] CM, p. 142, para. 2.

[6] See, e.g., para. 1.34, above.

4.07 Still another distortion in the CM's interpretation of Article 3, as set out in the passage just quoted, is the statement that the parties in Article 3 recognized that these agreements defined the boundary line between them. This is, in effect, an argument borrowed from the first theory and has been dealt with in the previous Chapter[7].

4.08 It is now appropriate to examine the relevant agreements, both those relied on by Chad and those overlooked or deliberately omitted, in order to establish whether or not the "actes internationaux en vigueur" in 1951 gave rise to a conventional boundary under international law. The burden is on Chad to establish that these "actes" did have this effect. It will be shown in the following Chapters how completely the CM fails to sustain this burden of proof.

CHAPTER II. INTERNATIONAL AGREEMENTS OF RELEVANCE OMITTED FROM THE ANNEX I LIST

4.09 Both of the CM's contentions concerning the Annex I list, that it was an exhaustive ("limitative") list and that it was "dressée avec soin", have been shown to be incorrect in Part I above[8]. Certain omissions from the list were mentioned there. There are listed below the principal omissions that have undoubted or possible relevance to the present case:

- **1890 Anglo-French Declaration;**
- **1900 Franco-Italian Accord;**
- **1902 Anglo-Italian Accord;**
- **1912 Treaty of Ouchy;**
- **Franco-Italian Agreement of 15 October 1912;**
- **1915 Secret Treaty of London (Articles 10 and 13);**
- **1924 Anglo-French Declaration;**
- **1924 Anglo-French Protocol;**
- **1934 Italo-Anglo-Egyptian Accord;**
- **1935 Treaty of Rome;**
- **1947 Italian Peace Treaty.**

---

[7] See, para. 3.17, above.

[8] See, para. 3.12, et seq., above.

4.10 France, and now Chad, have argued that the absence of the 1935 Treaty from the list constituted a renunciation of that Treaty by Libya. This is not accurate; at the very most, it was an indication that Libya, on the basis of French representations and its own preliminary investigation, believed that the Treaty did not meet the criterion of Article 3: that it was required to have been "en vigueur" in 1951. However, it is apparent from an examination of the above list of omitted agreements that absence from the list did not mean either that the agreement was not in force in 1951 or that the parties agreed that it was not in force on that date. Conversely, presence on the list did not mean that the agreement was, in fact, "en vigueur" in 1951, or that the parties agreed that it was, irrespective of the facts.

4.11 It is understandable that the 1890 Anglo-French Declaration did not appear on the list[9]. Aside from everything else it concerned the limits of zones of influence in a region far away from the Libya-Chad borderlands. Nevertheless, the 1890 Declaration is directly relevant to the present territorial dispute, although the CM skips over it quickly. Its relevance stems from the following:

- It was a recognition by Great Britain of the hinterland rights of France's Mediterranean possessions (Algeria and Tunisia) down to the Say-Barroua line (illustrated on Map LC-M 12)[10];

- Great Britain, in the 1890 Declaration, explicitly recognized a French sphere of influence down to the Say-Barroua line;

- By way of contrast, Article 3 of the 1899 Anglo-French Declaration, subsequently entered into, established, north of 15°N latitude, a line limiting French expansion toward the Nile;

---

[9] See, LM, para. 5.08 for a discussion of the 1890 Declaration.

[10] Lord Salisbury described it in exactly that way at the time. See, LM, para. 5.08. See, also CM, Annex 330, a statement of the French Foreign Minister (Waddington) to the Chambre des Députés on 4 November 1890, in which he referred to "cette immense zone qui est placée à l'arrière de nos possessions algériennes", a description comparable to the term hinterland.

- The territory over which France's sphere of influence (the Algeria-Tunisia hinterland) was thus recognized in 1890 concerned lands where France had no presence whatsoever and as to which it had virtually no knowledge - for Great Britain and France it was terra incognita (but not terra nullius);

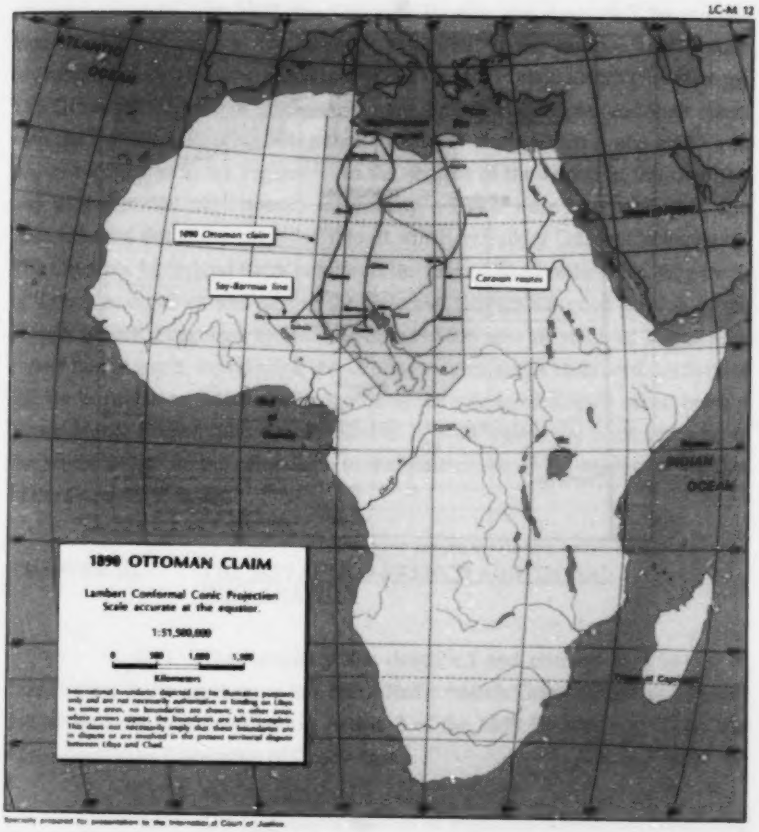
- Along with the 1890 Declaration, both Great Britain and France affirmed that the arrangement did not affect any rights the Ottoman Empire might have in the "regions which lie on the southern frontier of [its] Tripolitanian dominions", thus anticipating a claim by the Ottoman Empire to the hinterland of Tripolitania;

- The 1890 Declaration provoked just such an Ottoman claim in a protest made by the Porte to Great Britain and France: that the 1890 Declaration encroached on territories over which the Ottoman Empire had rights as part of the Tripolitanian hinterland; the Ottoman claim was set out in considerable detail at the time (Map LC-M 12);

- Thus, the 1890 Declaration may be regarded as being at the origin of this territorial dispute, although the basis of the Ottoman claim extended considerably further into the past.

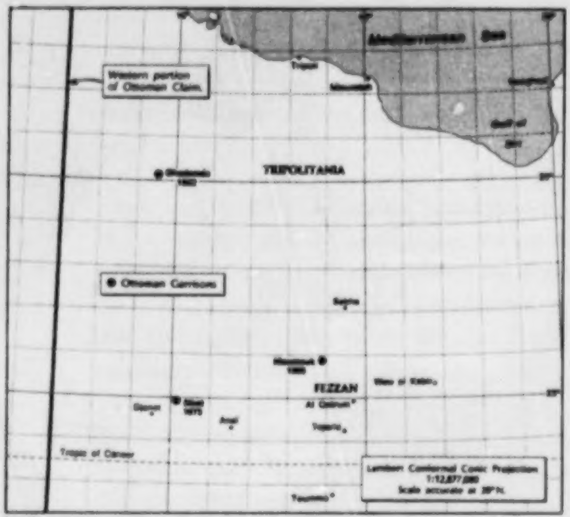
4.12 These events in 1890 bring out the point that there was a good deal more substance to the Ottoman hinterland claim than to France's claim to a sphere of influence down to the Say-Barroua line at that time. This was demonstrated in Part IV of the LM. Ottoman influence and control emanated from both Istanbul and Tripoli: from Istanbul, in the person of the Sultan as caliph and sovereign, to whom allegiance was rendered by the Sultanates of the Sudan; from Tripoli, through its control over entry into the interior and through the protection of the trade routes upon which the economic life of Tripoli depended, and around which the Ottoman claim had been framed (Map LC-M 12). Ottoman garrisons from Tripoli had been established in the western part of this hinterland well before 1890: at Ghadamès in 1862; at Mourzouk in 1865; at Ghat in 1875 (Map LC-M 13).

LC-M 12


ATLANTIC OCEAN
1890 Ottoman claim
Say-Barroua line
Caravan routes
INDIAN OCEAN
1890 OTTOMAN CLAIM
Lambert Conformal Conic Projection
Scale accurate at the equator.
1:51,500,000
0 500 1,000 1,500
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

LC-M 13


Mediterranean Sea
Tripoli
Misratah
Gulf of Sirt
Western portion of Ottoman Claim.
TRIPOLITANIA
Ottoman Garrisons
Sabha
Marzuq
FEZZAN
Wau al Kabir
Ghat
Al Qatrun
Tejerhi
Tropic of Cancer
Tummo
Lambert Conformal Conic Projection
Scale accurate at 28°N.

Specially prepared for presentation to the International Court of Justice

4.13 By 1830, the Ottoman Empire had developed meaningful links to the peoples and rulers of these regions; if the exercise of Ottoman sovereignty was incomplete in the region, the signs of French sovereignty were nil. The Ottoman ties were of a religious nature, linking the peoples and their rulers with the Sultan in Istanbul, allegiance to whom - both religious and civil - was widely recognized in the region[11]. In the context of the region at the time this was a recognition of Ottoman sovereignty. There were also economic and governmental ties to the vilayet of Tripoli, which was under Ottoman sovereignty. The Ottoman hinterland claim embraced the Libya-Chad borderlands lying south of Tripolitania, which was part of the Ottoman Empire. A good portion of the French sphere recognized by Great Britain in 1890 also lay south of Tripolitania rather than Algeria, overlapping the Ottoman claim, and it embraced portions of the trade routes on which the economy of the vilayet of Tripoli relied heavily. However, the French sphere recognized in 1890 lay well to the south and west of the borderlands. So the prior claim to the borderlands of any substance was that of the Ottoman Empire.

CHAPTER III. THE 1899 ANGLO-FRENCH ADDITIONAL DECLARATION

4.14 The boundary line described and claimed by Chad in its Submissions is the exact same line that Chad contends Great Britain and France intended as the line described in Article 3 of the 1899 Declaration. Thus, this agreement is the foundation of Chad's case.

4.15 The CM makes a series of important admissions concerning the Declaration:

- That it was designed to fix the limits of French expansion toward the region of the Nile in the aftermath of the Fachoda crisis[12];

---

[11] The Head of the Senoussi in a letter addressed to the European Powers in 1911 specifically acknowledged religious and civil allegiance to the Sultan and the Sublime Porte and assailed France for destroying the zawiyas and killing Ottoman subjects on what was declared to be the Ottoman territory of the borderlands. See, LM, para. 5.222 and Exhibit 48 thereto.

[12] See, CM, pp. 144-145, para. 11.

- That, unlike Article 2, Article 3 of the Declaration did not concern a boundary;

- That the boundary commission to be appointed under Article 4 was charged with demarcation of the Article 2 boundary not the Article 3 line[13];

- That the area embraced by Article 3 (i.e., north of 15°N latitude) concerned territories over which neither Great Britain nor France exercised effective control and in an area that was "à peu près inconnue" to Great Britain and France, who were ignorant of the geography of the regions[14];

- That no map was referred to in the text of the Declaration and no map was annexed to the instrument signed by the parties[15].

4.16 In order to prove that the line described in Article 3 of the 1899 Declaration is the exact same line as set out in Chad's Submissions, transformed into a conventional boundary opposable to Libya, Chad has several problems to overcome, such as: (i) establishing the direction of the Article 3 line so as to match exactly the line in the Submissions, given the assertion in the CM that Article 3 was ambiguous or vague as to the line's direction[16]; (ii) demonstrating how a line that in 1899 concerned no more than zones of influence became transformed into a boundary line; (iii) establishing how the provisions of Article 3 and the resulting line became opposable to Italy (and hence to Libya), in view of the fact that the 1899 Declaration was an agreement between Great Britain and France (res inter alios acta).

4.17 How the CM has proposed to overcome each of these hurdles will now be reviewed. However, the LM devotes a good deal of attention to the 1899 Declaration and, thus, in a sense, much of what the CM contends has

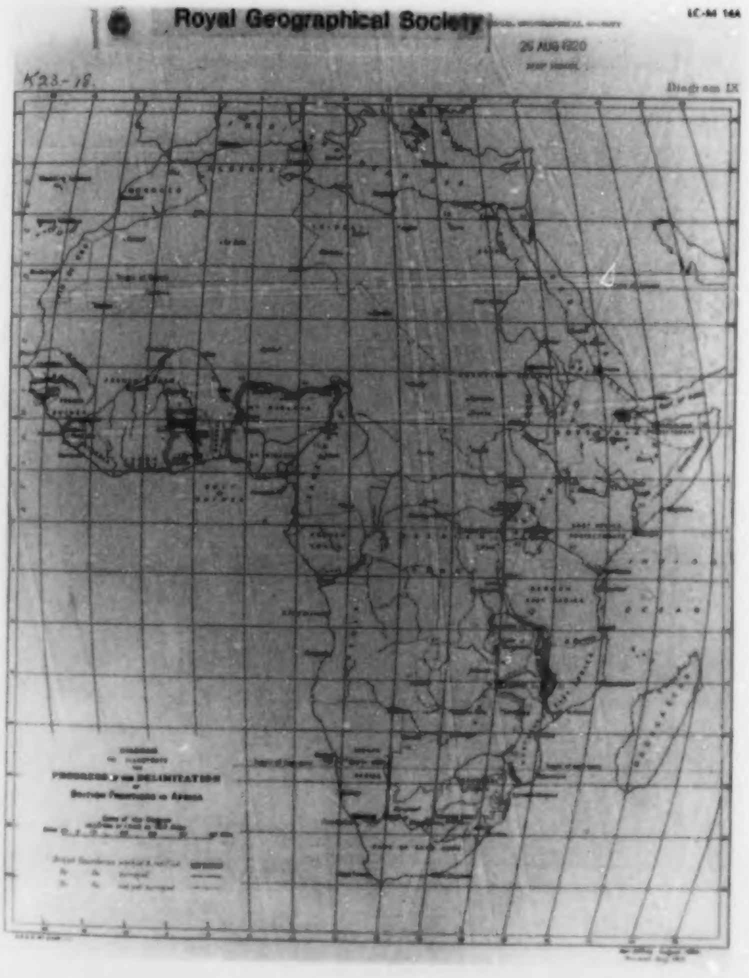
---

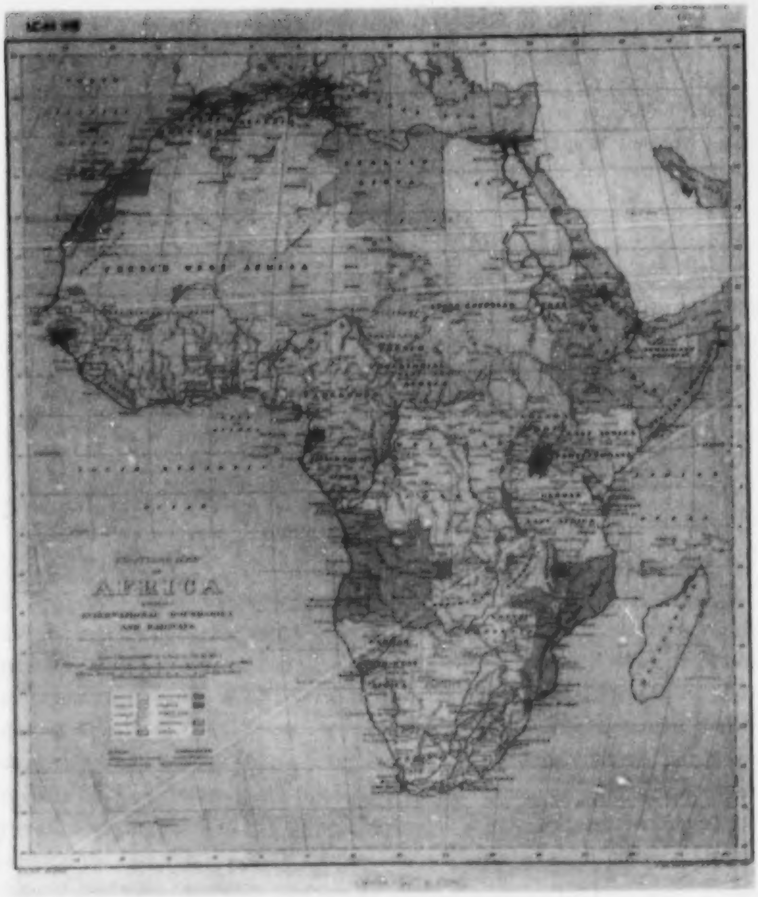
[13] See, CM, pp. 145-147, paras. 16 and 19.

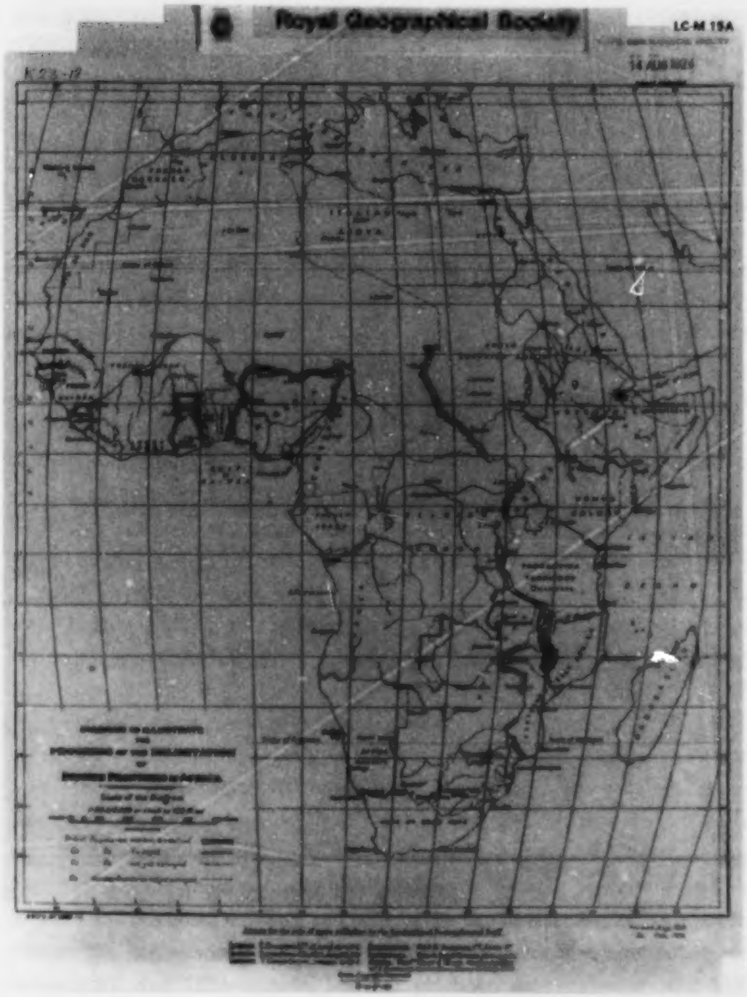
[14] See, CM, p. 148, para. 24.

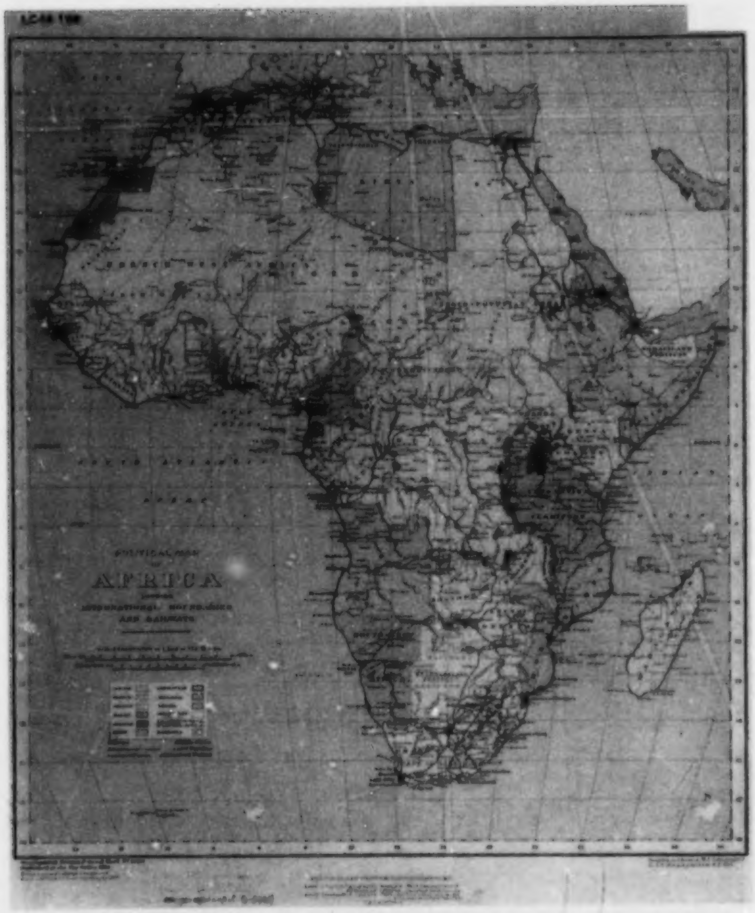
[15] See, CM, p. 147, para. 19, and p. 160, para. 71.

[16] See, CM, pp. 145-149, paras. 14-27.


Royal Geographical Society
26 AUG 1920
LC-M 164
K23-18.
Diagram IX
PROGRESS of the DELIMITATION
British Territories in Africa


FRENCH WEST AFRICA
AFRICA


Royal Geographical Society
LC-M 19A
K 23-12


POLITICAL MAP
AFRICA
INTERNATIONAL BOUNDARIES
AND RAILWAYS

already been rebutted by Libya. Insofar as possible, Libya will attempt here to avoid repeating unnecessarily what was so fully set out in its Memorial.

SECTION 1. The Intended Direction of the Article 3 Line

4.18 In part because the CM bases its conclusion as to the direction of the line on incomplete travaux, it has made a number of mistakes concerning what is certainly a key issue in Chad's case - the direction of the Article 3 line. The CM argues that resort to the travaux is necessary because Article 3 is ambiguous and vague. Libya does not agree. The Article 3 line started at a precise point (Tropic of Cancer and 16°E) and then descended "dans la direction du Sud-Est" ("shall run thence to the south-east"). There is nothing necessarily vague about these words; on the basis of such indications, a geographer would draw a true southeast line (135°) - and that is exactly what the British Government did, for they regarded the line to be a southeast line. This was demonstrated in the LM with reference to a 1916 British War Office Map[17]. Two more British maps appear here: a 1906 British War Office Map (revised to August 1913) Map LC-M 14A; and a 1914 British War Office Map, Map LC-M 14B[18]. The Article 3 line appearing on both maps is a strict southeast line. Two other British maps appear here as well to demonstrate the evolution of the Article 3 line on British War Office Maps. Map LC-M 15A is the same base map as 14A except that it has been revised to February 1924; it reflects the 1919 Anglo-French Convention line that modified the Article 3 line. Map LC-M 15B is the same base map as 14B except that it was revised in 1935; it reflects the 1935 Treaty line[19]. Thus the official British maps of 1906 and 1914 reveal that it was Great Britain's interpretation of the direction of the line described in Article 3 of the 1899 Declaration ("thence to the south-east") that it was a strict or true southeast line. It would not have been possible to be more precise than this in Article 3 and designate the exact end point of the line intersecting 24°E longitude, because the line was intended to join the Article 2 sector line, and that sector, between 11° and 15°N latitude, had not yet been delimited when the 1899 Declaration was signed, although the Article 2 sector line was unquestionably going to end very close to 15°N. But its precise end point was not known in 1899, only its approximate location.

---

[17] See, LM, para. 5.182 and Map No. 63. The Article 3 line is shown on that 1916 map as a strict southeast line. A photocopy of the entire map was furnished to the Court with the Memorial.

[18] G.S.G.S. No. 2226(a); and G.S.G.S. No. 2720. A larger photocopy of each map has been furnished to the Registry.

[19] A larger photocopy of each map has been furnished to the Registry.

4.19 The CM devotes a lot of attention to what it terms the historical context and the practice at that time, citing an impressive number of contemporary agreements, to establish that such a description of the line was not intended to be precise. But this misses the only meaningful question to be answered: what direction did the parties - Great Britain and France - intend the line to take? Great Britain interpreted it to be a true southeast line, as Maps LC-M 14A and 14B demonstrate; and the evidence strongly suggests that the French Government did, too. For one thing, there is no evidence of any French protest to these British maps. Further demonstration of this point will be made in the next Section, where the question of the famous 1899 map - the Non-Annexed Map - is discussed.

4.20 There is an important methodology to be followed in considering this matter. Since the interpretation of the provisions of a treaty is involved, the first task is to seek "the ordinary meaning to be given to the terms of the treaty" (Article 31, paragraph 1, of the 1969 Vienna Convention on the Law of Treaties). As pointed out above, the words "shall thence run to the south-east" ("dans la direction du Sud-Est") in their ordinary meaning are clear and precise. In such a case, to arrive at the meaning of Article 3, there is no need to consult "supplementary means of interpretation" - that is, the travaux préparatoires. According to Article 32 of the Vienna Convention, recourse to the travaux would be justified only if the meaning of the words to be interpreted were "ambiguous" or "obscure", or if the result obtained were "manifestly absurd or unreasonable". It is clear that here none of these hypotheses apply. Thus, the use of the travaux préparatoires can have only one purpose (as the Vienna Convention emphasizes): to verify that the objective interpretation based on the ordinary meaning of the text is confirmed by the travaux. In the following analysis, these basic principles of interpretation must be borne in mind.

4.21 The mistakes made in the CM concerning the intent of the parties to the 1899 Declaration largely stem from its reliance on incomplete travaux. Curiously, the CM resorts to certain travaux relevant to the Anglo-French 1919 Convention as substitute travaux for the 1899 Declaration. As will be shown further on[20], the views of the British negotiators in 1919 ran contrary to the direction of the Article 3 line shown on Great Britain's official maps of 1906, 1914 and 1916, just discussed. Chad has produced no evidence to show that the British negotiators in 1919 had made any attempt to discern the intention of Lord Salisbury and M. Cambon in 1899, which is the relevant question, not the British negotiators' assumptions in 1919 on the basis of maps of much improved accuracy compared to the maps used during the negotiations leading to the 1899 Declaration.

4.22 The principal mistaken conclusion reached in the CM is that the end point of the Article 3 southeast line was intended to intersect 24°N latitude at a point "nettement au nord" of 15°N[21] and, in fact, north of 18°N latitude[22]. This is clearly wrong. The origin of this mistake is the CM's misunderstanding of documents that record what took place during the negotiations after the British draft counter-proposal of 18 March 1899 had been prepared (but not tabled)[23].

4.23 Chad's analysis of the travaux only starts with proposals made on 17-18 March, but the relevant exchanges began well before, and as early as January[24]. The CM builds its argument around a draft British counter-proposal of 18 March[25] and two supposed British draft proposals of 19 March[26]. The British 18 March draft was never tabled, as the copy of the document clearly indicates ("not used"). The two British drafts of 19 March are, in fact, the same document, as will be explained. From this false start, the CM develops the theory that, as a result of French insistence, the end point of the southeast line was pushed more and more to the north ("un 'déplacement' constant de la limite vers le nord à la demande de la France"). In fact, the reverse occurred. It was Lord Salisbury who proposed pushing the line north to 18°N, to run from there northwest to the end point (Tropic of Cancer and 16°E). It was M. Cambon who objected that the line proposed by Lord Salisbury started too far to the north. This somewhat involved but important story can be followed by referring to Map LC-M 16.

---

[20] See, para. 4.182, et seq., below.

[21] See, CM, p. 375, Conclusion 1 (viii); and p. 165, para. 83 (iii).

[22] CM, p. 165, para. 83 (iv).

[23] See, CM, pp. 153-155, paras. 41-48.

[24] See, LM, para. 5.23, et seq.

[25] CM, Annex 52.

[26] CM, Annexes 53 and 54.

4.24 It will be recalled, as spelled out in the LM[27], that at this stage in the negotiations the Article 3 line being discussed was to ascend northwest from what is now the end point of the line, rather than to descend southeast from what is now its starting point. This is shown on the map. M. Cambon reacted strongly against the British proposal, tabled on 19 March, to start the Article 3 sector at 18°N, for he felt that it started too far north; and to accommodate him Lord Salisbury agreed to return to the earlier starting point of 15°N, instead. This makes it apparent that the Article 3 sector was not intended to end (or begin) "nettement au nord" of 15°N and certainly not north of 18°N. At the time Lord Salisbury made his proposal, the Article 2 sector boundary was to end at 14°20'N[28]; so 15°N was slightly to the north of that end point. Subsequently, Article 2 was revised so that its end point became 15°N. A precise southeast line under Article 3 would, according to Chad, intersect 24°E at 15°40'N (15°30'N according to the 1919 British negotiators; 15°35' according to the LM). All of these points of intersection were "to the north of the 15th parallel of latitude", to quote from Article 3.

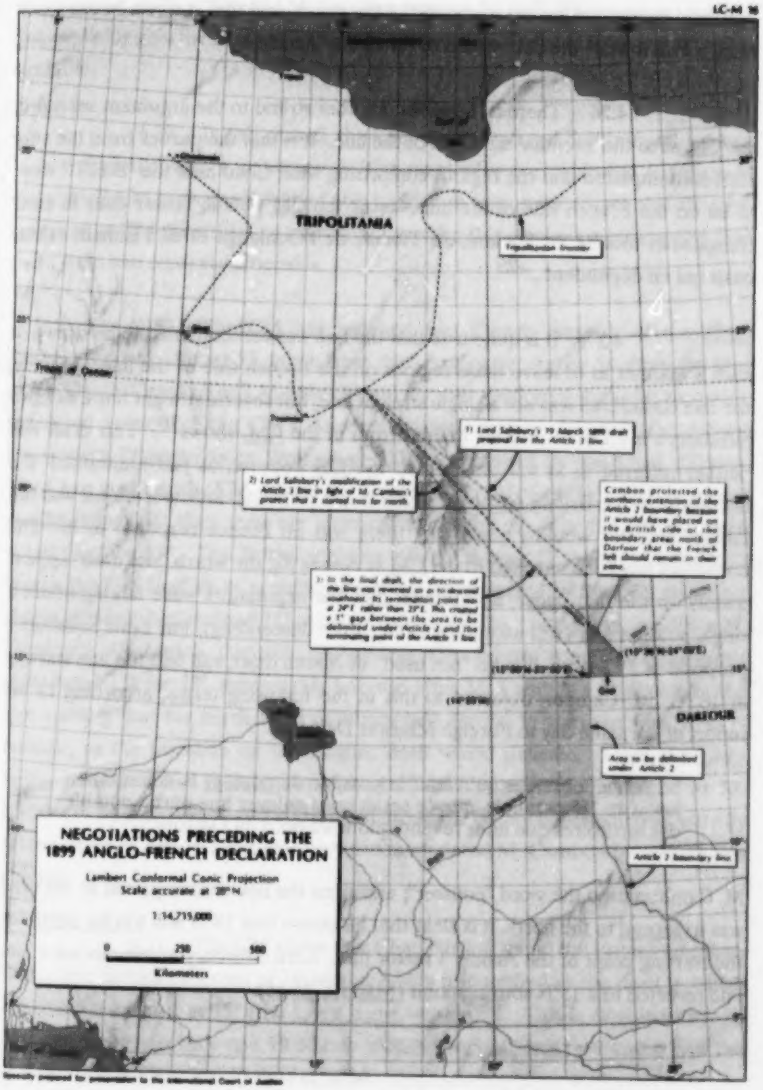
4.25 The travaux show quite the opposite of what the CM contends: the parties intended the line to start - and subsequently, when directions were reversed in the last days of negotiations, to end - very near, but slightly north of 15°N, where the first sector boundary under Article 2 was to end. Throughout the negotiations it was evident that the Article 2 and Article 3 sectors were foreseen to end and start, respectively, at approximately the same point, which only made sense. The practical problem was that when the 1899 Declaration was signed the precise end point of the Article 2 sector was not known, since it had yet to be delimited. It was, in fact, for this reason that in the final draft the description of the line was reversed, so as to descend rather than ascend; for the end point in the north (16°E longitude - Tropic of Cancer) was

---

[27] See, LM, paras. 5.20-5.48. All the relevant travaux are cited there and annexed to the LM.

[28] See, LM, para. 5.30.

LC-M 16


TRIPOLITANIA
Tripolitanian frontier
Tropic of Cancer
1) Lord Salisbury's 19 March 1899 draft proposal for the Article 3 line.
2) Lord Salisbury's modification of the Article 3 line in light of M. Cambon's protest that it started too far north.
Cambon protested the northern extension of the Article 2 boundary because it would have placed on the British side of the boundary areas north of Darfour that the French felt should remain in their zone.
3) In the final draft, the direction of the line was reversed so as to descend southeast. Its terminating point was at 24°E rather than 23°E. This created a 1° gap between the area to be delimited under Article 2 and the terminating point of the Article 3 line.
(15°00'N-23°00'E)
DARFOUR
Area to be delimited under Article 2
Article 2 boundary line
NEGOTIATIONS PRECEDING THE 1899 ANGLO-FRENCH DECLARATION
Lambert Conformal Conic Projection
Scale accurate at 20°N
1:14,715,000
0
250
500
Kilometers

Specially prepared for presentation to the International Court of Justice

precisely known, unlike the end point in the south, and thus it was a better point from which to start the description of the line in Article 3.

4.26 There is, however, another strand to the argument set out in the CM as to the intended direction of the line. It is that the parties from the very start contemplated that the regions comprising what Chad calls the "B.E.T." were to be on the French side of the line - or as the CM puts it,"laisser dans la zone française la totalité du Borkou, du Tibesti, de l'Ounianga et de l'Ennedi et des oasis qui en dépendent ..."[29].

4.27 It is quite true that the line was contemplated to be drawn in such a manner as to leave these regions on the French side of the line. Initially, the line considered was not a single straight line, but several straight lines, as Lord Salisbury's draft of 18 March, quoted from in the CM, shows[30]. This draft was neither referred to in nor annexed to the LM because, as just mentioned, the document in the British Archives, which is this proposal, indicates that it was not tabled; and this would explain why there was no French response to it. The document has been annexed to the CM as Annex 52; the words "not used" appear plainly on the first page. By the next day, the negotiators were talking about a single straight line (still ascending rather than descending), but Lord Salisbury's proposal of 19 March, like his "not used" 18 March draft, still had the line starting at 18°N. M. Cambon objected to this in the following terms, according to his report of the same day to Foreign Minister Delcassé:

> "... j'ai fait observer qu'il était impossible de pousser la délimitation jusqu'au 18° parallèle, que ce serait nous enlever une partie notable des territoires que nous revendiquons au nord du Darfour ...[31]."

M. Cambon used the word "pousser"; and since the line contemplated at the time was to ascend to the north, it is clear that he meant that 18°N was too far north for the starting point of the Article 3 sector line. Lord Salisbury accommodated him and reverted to a 15°N starting point (Map LC-M 16).

---

[29] CM, p. 156, para. 53.

[30] CM, p. 154, para. 44.

[31] LM, French Archives Annex, p. 39. Emphasis added.

4.28 Why did M. Cambon react as he did? There are no travaux that explicitly give the answer. But the reasons can be deduced from the evidence available.

4.29 In this regard, the CM states that Lord Salisbury tabled two 19 March drafts, which is incorrect. The reason for the confusion has already been set out at paragraph 5.41 of the LM. It is important to get this straight, because the CM constructs an argument based on this erroneous assumption that there were two separate proposals.

4.30 The CM has annexed two French versions of the same British proposal: Annex 53, taken from the Livre jaune; Annex 54, from the files of the Quai d'Orsay. The LM annexed still another version of the same proposal, a retyped version of the CM's Annex 54, which may be found in the official Documents Diplomatiques Françaises (DDF) published by the Quai d'Orsay. The Livre jaune draft (CM, Annex 53) is an edited version of the same document as CM Annex 54; their texts are identical except for the fact that 15° has been substituted for 18°. The British archives contain a copy of the hand-written 19 March draft in English as actually tabled[32]. As explained in the LM, this draft shows 18° scratched out and 15° written in above it. The Livre jaune, in editing M. Cambon's 19 March dispatch setting out the British proposal, apparently substituted 15° for 18°, presumably because after M. Cambon's objection to the line starting that far north Lord Salisbury had agreed to start the line at 15°N latitude, as the insertion on the English draft would indicate. Thus, the Livre jaune published the British proposal of 19 March as it was modified at M. Cambon's request, whereas the DDF published M. Cambon's dispatch as actually tabled, initially, before Lord Salisbury accommodated M. Cambon by making this change.

4.31 The CM states that Chad has not found the French response to the first British proposal of 19 March, which it identified as the draft in which the line would start at 15° (the Livre jaune version)[33]. This is explained by the fact that there was only one 19 March British proposal, not two, and it was the one in which the line was to start at 18°N.

---

[32] See, LM, British Archives Annex, p. 35.

[33] CM, p. 154, para. 46.

4.32 The CM contends that the so-called first British draft of 19 March was the first time that 15°N had appeared in the negotiations, adding that it appears in the manuscript version of this draft written in over 18° ("une surcharge du 18ème parallèle"). The manuscript version, which Chad has supplied[34], does not appear to show such a "surcharge", although the figure 18 appears written in on the right-hand margin opposite the figure 15°. Presumably the CM interprets this as a "surcharge" indicating that 15° had been substituted for 18°. However, this manuscript version is not of the 19 March proposal but of M. Cambon's 20 March dispatch to M. Delcassé[35]; and it starts out this way:

> "Lord Salisbury accepte, si vous y adhérez, la rédaction suivante."

The text of Article 3 in this manuscript version contains the figure 15°. Thus, this manuscript evidence directly confirms Libya's interpretation of what occurred: Lord Salisbury, at M. Cambon's insistence, had dropped the starting point of the line south from 18°N to 15°N.

4.33 In any event, this was not the first time that 15°N had appeared. Contrary to the CM's assertion, there had been several earlier drafts mentioning 15°N. For example, M. Cambon submitted a draft on 16 February that would have had the Article 3 sector line begin at 15°N latitude, the line being described as follows:

> "A partir de sa rencontre avec le 15° degré de latitude nord, cette ligne suivra ce parallèle jusqu'à la rencontre d'une ligne qui gagnera la frontière tripolitaine, de façon à laisser dans la sphère française la totalité des oasis formant le Borkou et le Tibesti[36]."

4.34 Taking the map prepared in 1899 by the Bulletin du Comité de l'Afrique française (BCAF) to illustrate the 1899 Declaration - which the CM uses as an illustration[37] (Map LC-M 17) - if 15°N is followed east (as the sentence quoted just above from the 16 Februry draft can only be interpreted to have meant) to the point from which a second line could be drawn headed northwest to the Tripolitanian frontier (and assuming this to be at the intersection of the Tropic of Cancer and 16°E, although that point had not yet been identified by the parties), in such a way as to leave the oases of Borkou and Tibesti on the French side of the line, such a line would start at the intersection of 15°N and approximately 24°E, as shown on Map LC-M 17. The direction of the line is almost exactly northwest/southeast, in contrast to the dark line on the BCAF map, purporting to represent the Article 3 line, which crosses far to the north of Tibesti.

---

[34] CM, Production 3.

[35] This dispatch of 20 March was published in a printed version in the DDF and appears at LM, French Archives Annex, p. 43.

[36] LM, French Archives Annex, p. 17.

[37] CM, p. 146.

4.35 At this point, it is necessary to consider why M. Cambon vigorously objected to the 19 March British draft, which would have begun the Article 3 sector line at 18°N. Under Lord Salisbury's proposal set out in that draft, the Article 2 sector, which was to be a real boundary - although yet to be delimited - would continue north to 18°N latitude; only after that point would it have become a line limiting France's expansion to the north and east. Such a line would have placed on the British side of the boundary a significant area to the north of Darfour which, under M. Cambon's 16 February draft, would have been on the French side of the line (Map LC-M 16).

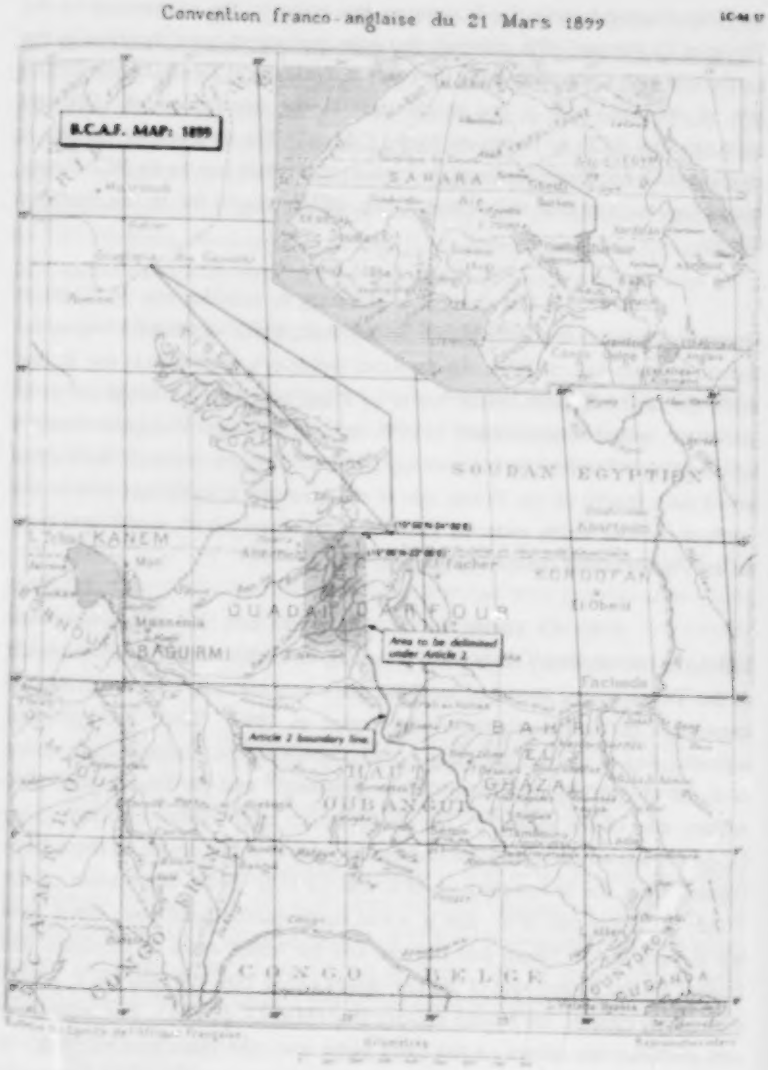
4.36 Of course, as the CM points out, the negotiators were looking at contemporary maps while preparing these proposals[38]. Features such as the Tibesti massif appeared on these maps very inexactly due to the limited knowledge of the geography of the region in 1899. Chad has furnished reproductions of the two maps that Lord Salisbury and M. Cambon had in front of them: an 1892 German map (Justus Perthes)[39] and the French 1895-1896 military map of the region[40]. The BCAF sketch map referred to above (Map LC-M 17) was an approximation of these two maps. A line drawn on these maps running from the intersection of 24°E and 15°35'N to the intersection of the Tropic of Cancer and 16°E - that is, a true northwest/southeast line - would have left the regions of Tibesti and Borkou, and the major oases of Ounianga and Ennedi, on the French side of the line (Maps LC-M 18A, 18B and 18C). This is particularly clear on the French military map (Map LC-M 18A). In contrast, the east-southeast line shown on the Livre jaune map (the Non-Annexed Map), as these maps show, would have produced a boundary several hundred kilometres

---

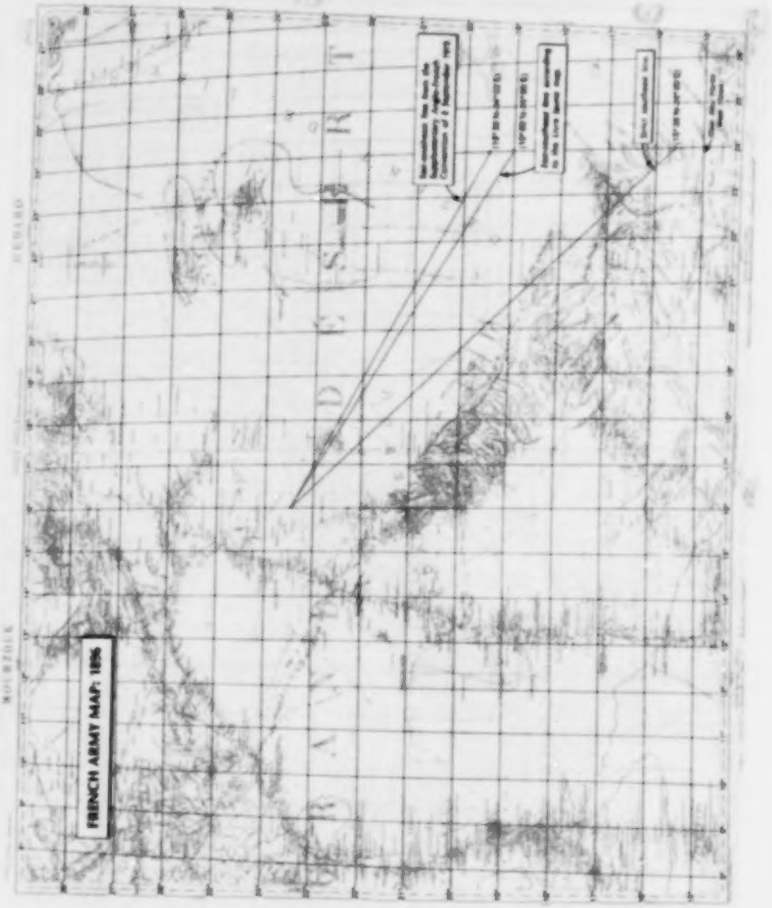
[38] See, e.g., CM, p. 158, para. 62.

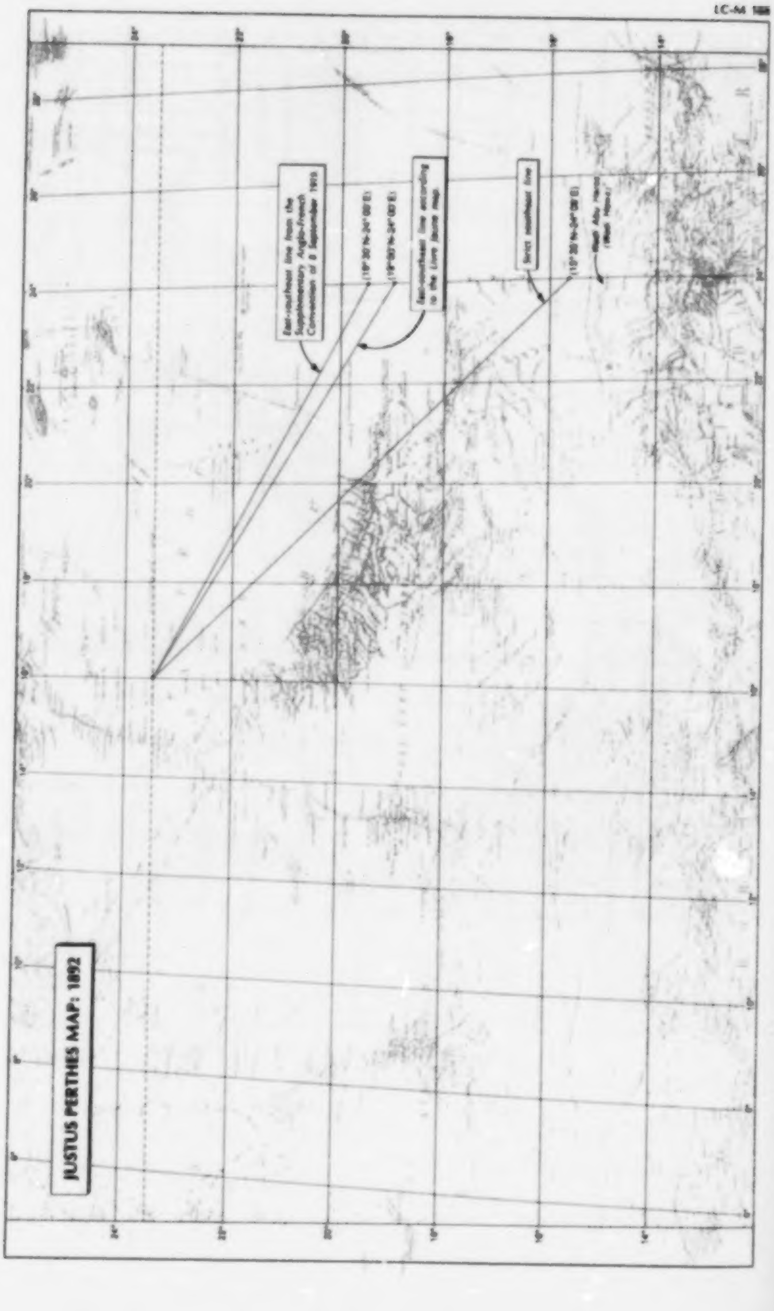
[39] CM, Production 247.

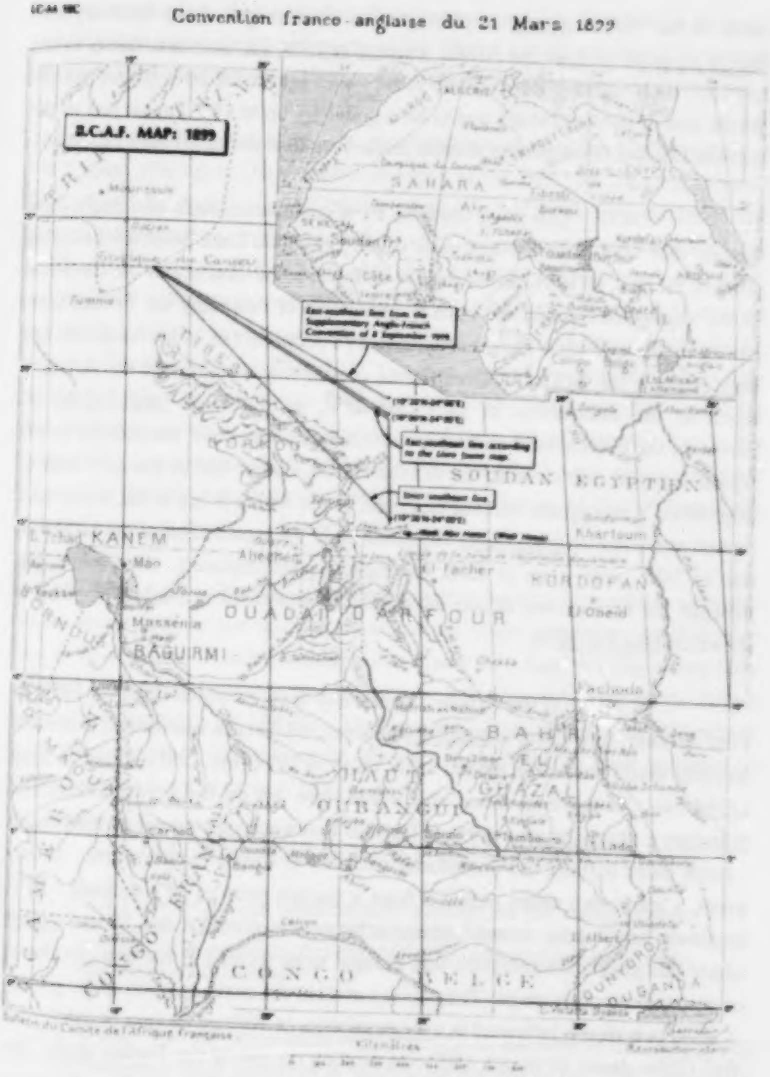
[40] CM, Production 248.


Convention franco-anglaise du 21 Mars 1899
B.C.A.F. MAP: 1899
SAHARA
SOUDAN EGYPTIEN
KANEM
OUADAI
DARFOUR
KORDOFAN
El Fâcher
El Obeid
Massenia
BAGUIRMI
Area to be delimited under Article 2
Article 2 boundary line
Fachoda
BAHR EL GHAZAL
HAUT OUBANGUI
CONGO BELGE
OUNYORO
OUGANDA
Kilomètres

LC-M 184


FRENCH ARMY MAP: 1896
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
East-southeast line according to the Livre Jaune map
Strict southeast line
D E S E R T


LC-M
JUSTUS PERTHES MAP: 1892
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
(19°30'N–24°00'E)
(19°00'N–24°00'E)
East-southeast line according to the Livre Jaune map
Strict southeast line
(15°30'N–24°00'E)
Wadi Abu Hawa (Wadi Howa)


LC-M 18C
Convention franco-anglaise du 21 Mars 1899
B.C.A.F. MAP: 1899
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
East-southeast line according to the Livre Jaune map
Strict southeast line
Wadi Abu Hamra (Wadi Howa)
SAHARA
SOUDAN EGYPTIEN
KANEM
Tchad
Mao
Alsechen
El Facher
Khartoum
KORDOFAN
El Obeïd
OUADAI
DARFOUR
Massénia
BAGUIRMI
Fachoda
BAHR EL GHAZAL
HAUT OUBANGUI
CONGO BELGE
OUNYORO
OUGANDA
Bulletin du Comité de l'Afrique Française
Kilomètres

north of the Tibesti massif, as portrayed on these maps. Lord Salisbury's 19 March proposal to start the Article 3 sector at 18°N, on the other hand, would have left these same regions on the French side but would have placed on the British side of the line (which was to be a boundary up to 18°N) areas just to the north of Darfour of far greater interest to the French at the time (Map LC-M 16).

4.37 This point deserves more explanation since one might have thought that M^{r} Cambon should have eagerly accepted Lord Salisbury's starting point of the line, at 18°N, rather than rejecting it, as he clearly did. At this stage of the negotiations, there had been no discussion of extending the French zone east of 23°E longitude. Thus, Lord Salisbury's proposal (of which no sketch has been found in the British archives) would presumably have started the Article 3 sector at the intersection of 18°N and 23°E, as shown on Map LC-M 16. However, the French were anxious to extend the French zone, particularly in the Article 2 sector, east to 24°E. In this they failed, except that in the final days of negotiation it was agreed that the end point of the Article 3 line in the south (the dashed green line on Map LC-M 16) would be at the intersection of the southeast line at 24°E rather than at 23°E, as originally contemplated. This left a gap between the two sectors, as was discussed and illustrated in the LM[41]. This is shown on Map LC-M 16.

4.38 If the Article 2 sector had been extended north to 18°N, as Lord Salisbury proposed, a boundary between the French and British territorial interests would have been agreed as far north as 18°N (the solid red line on Map LC-M 16). As the map shows, this would have left on the British side of the boundary a triangular area north of Darfour that was highly prized by the French - much more so than the unexplored stretches of desert further north. In any event, a line drawn under Article 3 from a starting point of 18°N latitude - 24°E longitude would have crossed considerably to the north of the Tibesti massif where this geographical feature was thought to be located at the time, as shown on the contemporary maps. This was not at all in the contemplation of the parties in 1899, as is clearly indicated in a memorandum of William Everett of the British War Office dated 14 March 1899 commenting on one of the French drafts that would have left a "belt of sand of at least 10 miles width in the French sphere measured from the foot of the mountains"[42]. He strongly advised against it, and it was not accepted. So it is evident that the southeast line described in Article 3 was intended to cut across just north of the Tibesti *massif*, not over 100 miles to the north as the east-southeast line on the *Non-Annexed Map* would have done.

---

[41] See, LM, para. 5.42, and Map No. 47.

[42] LM, British Archives Annex, p. 18, et seq.

4.39 It is, therefore, not possible to accept the *CM*'s analysis of the *travaux* relating to the intended direction of the line. M. Cambon rejected 18°N as *too far north*; and the parties agreed on 15°N. A true southeast line drawn on the contemporary maps in front of the negotiators would have left all of the regions France wanted to have on its side of the line on the French side. Such a line would have intersected 24°E at 15°35'N - which explains the reference in Article 3 to that line as ending to the north of 15°N. The line drawn on the BCAF sketch map (*Maps LC-M* 17 and 18C) - which carried the Article 3 line a long distance north along presumably 24°E, and then at approximately 19°N turned the line northwest to the Tropic of Cancer - would have left an immense area to the north of these regions on the French side of the line. Such a line had no rationale at all. The line was intended to be a strict southeast line, as an examination of the complete *travaux* shows.

4.40 Of course, the problem that became increasingly apparent as the years wore on was that the maps in front of the negotiators in 1899 were not at all accurate. A strict southeast line drawn on a map of today would have divided Tibesti and Ounianga and would have left most of Ennedi on the British side of the line (*Map LC-M* 18D). The intention of the parties in 1899, however, cannot be discerned on the basis of this kind of hindsight. It must be based on what the maps showed them in 1899.

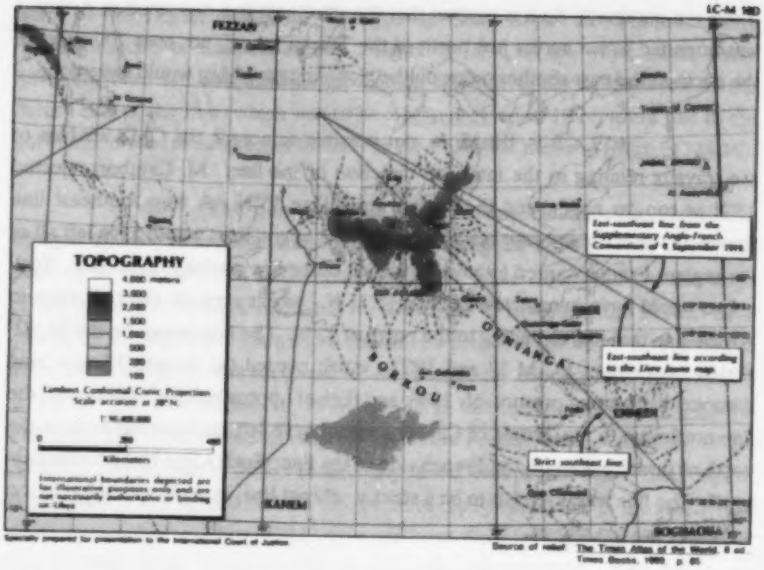
4.41 The *CM* reaches quite a different conclusion, however:

> "... les parties qui ont constamment travaillé sur des cartes avaient en tête un tracé précis et n'ont probablement pas réalisé, au moment de la signature du texte définitif, l'ambiguïté relative de la ligne finalement décrite[43]."

This is wrong. The only conclusion to be reached on the basis of the *travaux* and the contemporary maps consulted in negotiating the text of the 1899 Declaration was that the text of Article 3 expressed without ambiguity the direction that the Article 3 line limiting French expansion northward was intended to take. It was intended to be a southeast line, and the words "thence to the southeast" expressed

---

[43] *CM*, p. 160, para. 71.


LC-M 180
FEZZAN
TOPOGRAPHY
4,000 meters
3,000
2,000
1,500
1,000
500
200
100
Lambert Conformal Conic Projection
Scale accurate at 20°N
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
East-southeast line according to the Livre Jaune map
Strict southeast line
OUNIANGA
BORKOU
KANEM
SOGHAORA

Specially prepared for presentation to the International Court of Justice

Source of relief: The Times Atlas of the World, 6 ed. Times Books, 1980 p. 85

that accurately. The southeast line was intended to meet the end point of the Article 2 sector line - once that had been determined following the delimitation of that sector yet to take place - to the north of 15°N, but only slightly so. By ending a true southeast line under Article 3 at its intersection with 24°N longitude, at 15°35'N latitude, a slight gap would be left between the two sector lines, to be tidied up after the Article 2 sector had been delimited[44].

4.42 It is not clear from the CM just what is Chad's argument based on the maps that were before Lord Salisbury and M. Cambon in 1899[45]. For the CM states that:

> "... la ligne a pour objet d'inclure la totalité du B.E.T. dans la zone française, non de partager cette zone. C'est donc en fonction de la figuration des montagnes et des oasis du Borkou, de l'Ennedi et du Tibesti sur les cartes [referring here to the 1891-1892 Justus Perthes and 1896 French military maps], qu'il faut interpréter le paragraphe 3 de la Déclaration de 1899 ...[46]."

4.43 This statement seems correct: the line was intended to be drawn so as to leave these regions on the French side; and where these regions were located in relation to the intended line must be considered on the basis of the maps that were in front of Lord Salisbury and M. Cambon in 1899. It is what the CM then adds that is confusing:

> "Il suffit de se reporter à ces cartes ... pour constater qu'une ligne de direction Sud-Est, stricto sensu, ne pouvait avoir un tel effet et aurait coupé le B.E.T., contrairement à l'intention expresse des Parties[47]."

4.44 Surely Chad has not failed to draw a true southeast line on these two maps, copies of which Chad produced with the CM, and to realize that such a line would carry out the intention of the parties and not cut through the "B.E.T." (Maps LC-M 18A, 18 B and 18C). This is particularly clear on the 1896 French military map: Zoghaou, Ennedi, the oases of Ounianga and all of the Tibesti massif, not to speak of Borkou further south, all lie on the French side of the line. So either Chad has incorrectly drawn this line on these maps or else the CM is saying something quite different - that the effect of a southeast line ought to be judged on the basis of modern maps, on which the "B.E.T." is indeed divided by a strict southeast line, rather than on the basis of the maps that were in front of the 1899 negotiators. Such a proposition is flatly wrong. And there is no basis at all for suggesting that Lord Salisbury and M. Cambon had in mind the sort of line depicted on the BCAF map (Map LC-M 18C), which runs parallel to, and some 200 kilometres north of, the Tibesti massif.

---

[44] See, LM, para. 5.42, Map No. 47, and Map LC-M 16 referred to at para. 4.23, above.

[45] See, CM, pp. 158-159, paras. 62-64. Of course, in 1899 there was no area designated as the "B.E.T.".

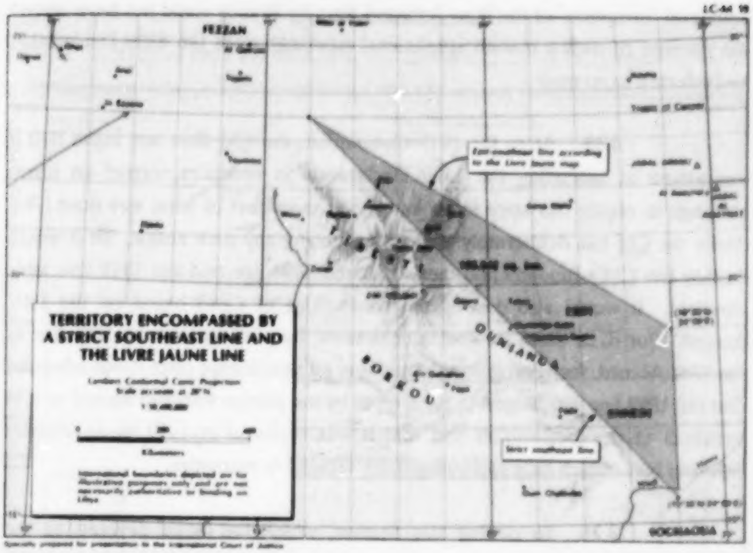
[46] CM, p. 159, para. 63.

[47] CM, p. 159, para. 64.

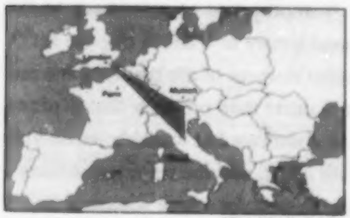
4.45 What the parties in 1899 intended the direction of the Article 3 line to be must be determined on the basis of their objective - to leave these regions on the French side - and whether on the basis of the geographical information before them (based on the two maps referred to) such a line achieved this objective. Clearly a strict southeast line met this test and, thus, the description of the line in Article 3 was not ambiguous; nor could it have been made any more precise because the northern segment of the Article 2 sector had not yet been delimited and, hence, the exact end point of the southeast line could not be indicated exactly until after such a delimitation.

4.46 Thus, recourse to the travaux préparatoires directly confirms the correctness of the interpretation of Article 3, based on the ordinary meaning of the words "shall run thence to the south-east" ("dans la direction du Sud-Est"), that the parties intended to describe a strict southeast line. This confirmation is seen from the fact that such a line - strict southeast - carried out their common objective as established on the basis of the geographical knowledge existing at the time the 1899 Declaration was signed. The fact that this geographical knowledge was found subsequently to be incorrect could have led the parties to contemplate invalidating the 1899 Declaration, or at least its Article 3, on the basis of an error relating to a fact assumed to exist at the time of their agreement once the error was discovered and assuming that this fact formed an "essential" basis of their consent (Article 48 of the Vienna Convention). Such a hypothesis did not take place: the 1899 Declaration was never annulled. As a result, it retains its original contents including the key phrase concerning the southeast direction of the Article 3 line quoted above.

4.47 It goes without saying that Great Britain and France, once the error had been recognized, could have corrected it by appropriately modifying Article 3 by mutual agreement. But this hypothesis did not take place either. The


FEZZAN
Tropic of Cancer
East-southeast line according to the Livre Jaune map
TIBESTI
100,000 sq. km
OUNIANGA
BORKOU
Strict southeast line
TERRITORY ENCOMPASSED BY A STRICT SOUTHEAST LINE AND THE LIVRE JAUNE LINE
Lambert Conformal Conic Projection
Scale accurate at 20°N
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya

Specially prepared for presentation to the International Court of Justice


London
Paris
Munich

AREA COMPARISON

unilateral "invention" of the Non-Annexed Map by France could not have served the purpose of such a mutual agreement, especially since the 1899 Declaration had referred to no map.

4.48 As to the 1919 Convention, the CM does not argue that it was aimed at amending the 1899 Declaration in order to correct an error, although in reality this appears to have been the effect of what was done. No doubt the CM has deliberately avoided advancing any such notion, for it would destroy the CM's fundamental thesis that the 1899 line and the 1919 line were identical. It would also destroy the contentions of Chad based on the 1902 Accord. For if, as Chad incorrectly maintains, Italy recognized the 1899 line in the 1902 Accord, such recognition would lose all significance once it was admitted that the 1899 line was judged to be in error by the parties who had agreed to it in Article 3 of the Declaration and that it was replaced in 1919 by an entirely different line - which Italy had indisputably refused to recognize.

4.49 In closing this Section, which has been devoted to the intended direction of the Article 3 line, it is appropriate to refer back to the comparison suggested earlier of Chad's second theory to a circus trapeze act[48]. The direction of the Article 3 line is an essential element of the theory; if the line intended by Lord Salisbury and M. Cambon is other than precisely that depicted on the Non-Annexed Map - and a strict or true southeast line would be an entirely different line - then Chad's second theory falls apart, and the trapeze act hurtles to the ground, bringing with it the first theory as well, for a true southeast line is not at all the line described in Chad's Submissions. This will be demonstrated as the discussion of the second theory progresses.

SECTION 2. The Non-Annexed Map

4.50 Just as the direction of the Article 3 line is a pivotal element in Chad's case, so also is the famous map, which may explain the quite extraordinary attempt in the CM to establish that the map had the same effect as if it had in fact been annexed to the original 1899 Declaration, thus supposedly justifying France's (and now Chad's) description of it as the map "annexed to the 1899 Declaration", when it was not.

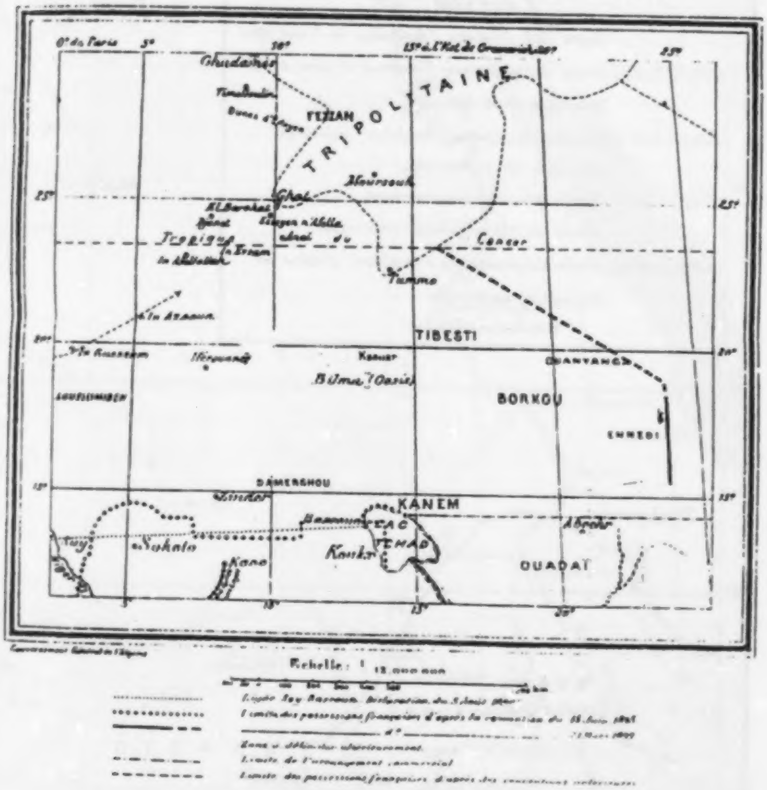
---

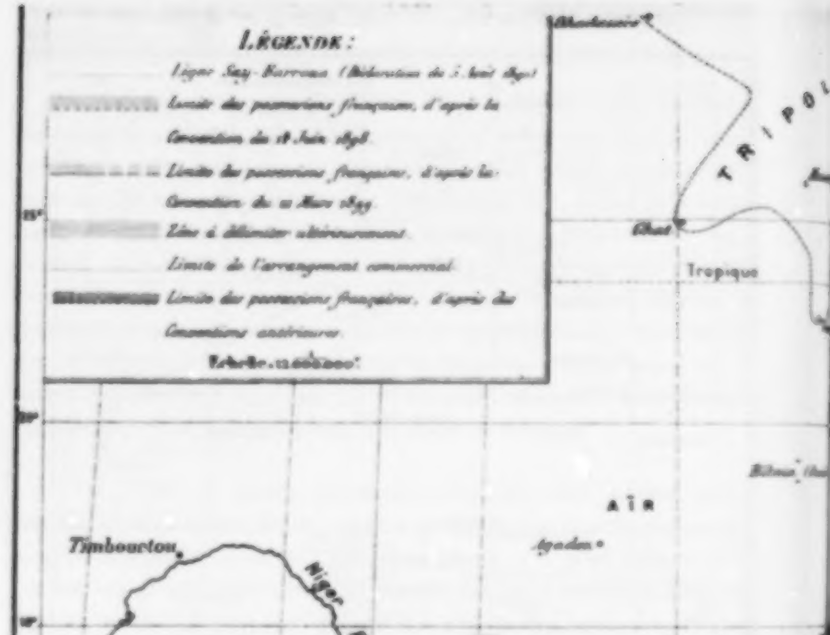
[48] See, para. 1.37, above.

LC-M 22

Extrait

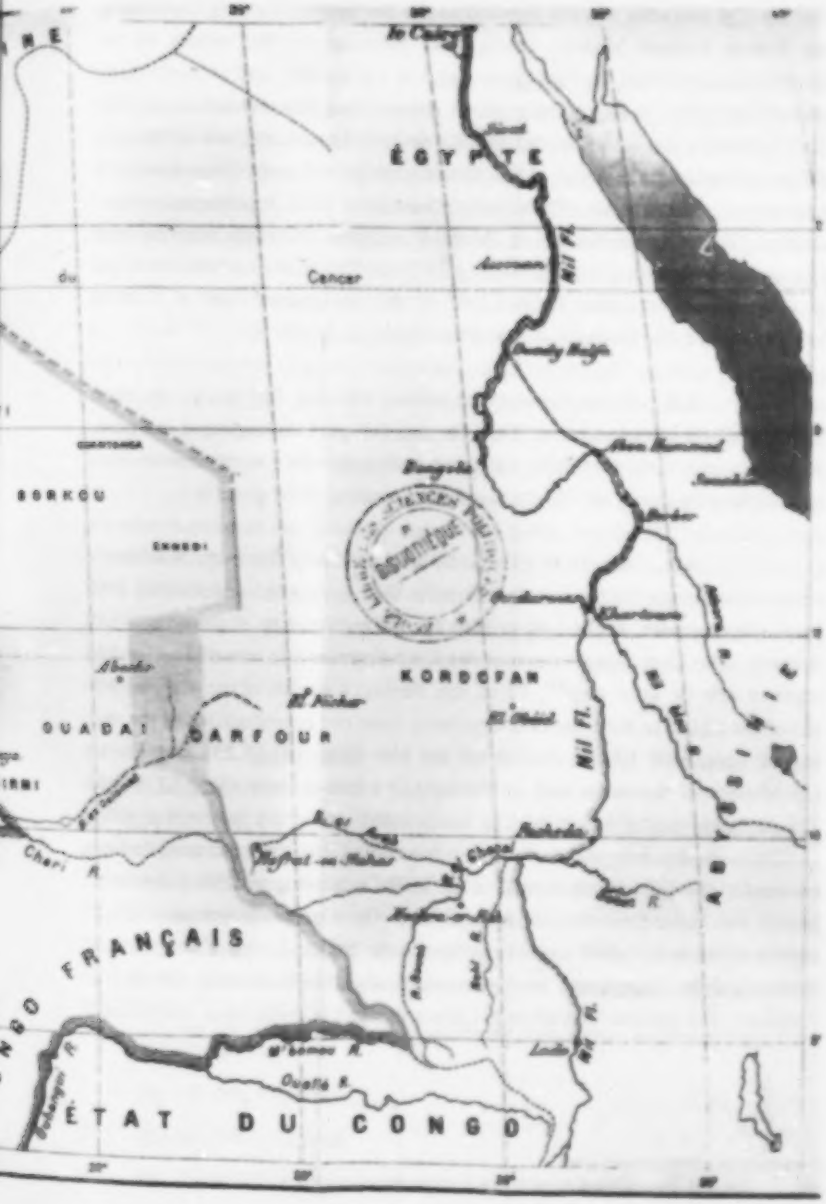
de la Carte annexée à la déclaration additionnelle du 21 Mars 1899 à la Convention Franco-Anglaise du 14 Juin 1898


0° de Paris
5°
10°
15° à l'Est de Greenwich 20°
25°
Ghadamès
FEZZAN
TRIPOLITAINE
Mourzouk
Ghat
Tropique du Cancer
Tummo
TIBESTI
Kaouar
Bilma (Oasis)
BORKOU
ENNEDI
DAMERGHOU
Zinder
KANEM
LAC TCHAD
Kouka
Abeché
OUADAÏ
Sokoto
Kano
Say
Gouvernement Général de l'Algérie
Echelle : 1/12.000.000
Ligne Say Barroua. Déclaration du 5 Août 1890
Limite des possessions françaises d'après la convention du 14 Juin 1898
d° 21 Mars 1899
Zone à délimiter ultérieurement.
Limite de l'arrangement commercial
Limite des possessions françaises d'après des conventions antérieures


LÉGENDE :
Ligne Say-Barroua (Déclaration du 5 Août 1890)
Limite des possessions françaises, d'après la Convention du 14 Juin 1898.
Limite des possessions françaises, d'après la Convention du 21 Mars 1899.
Zône à délimiter ultérieurement.
Limite de l'arrangement commercial.
Limite des possessions françaises, d'après les Conventions antérieures.
Echelle: 1:12.000.000
TRIPOL
Ghat
Tropique
Bilma
AÏR
Agadez
Timbouctou
Niger Fl.
Say
MOSSI
Ouagadougou
GOURMA
Sokoto
Kano
SOKOTO
Barroua
Kouka
BORNO
Nikki
Boussa
Carnotville
Salaga
Kong
Bondoukou
Lokodja
Benoué R.
Yola
Ngaoundéré
DAHOMEY
TOGO
LAGOS
CÔTE D'IVOIRE
CÔTE-D'OR
Volta Fl.
Comoé R.
Niger Fl.
Gd Bassam
Assinie
Accra
Cape Coast Castle
CAMEROU
5°
de Greenwich 0°
0° de Paris
5°
10°
25°
20°
15°
10°
5°

Gravé et tiré par Erhard Frères, 35 bis, Rue Denfert-Rochereau, Paris

LC-M 26


le Caire
ÉGYPTE
Siout
Nil Fl.
du
Cancer
Assouan
Ouady Halfa
Abou Hamed
Dongola
Souakin
Berber
BORKOU
ENNEDI
Omdurman
Khartoum
KORDOFAN
ABYSSINIE
Abecher
El Fâcher
El Obeid
OUADAI
DARFOUR
Nil Fl.
Chari R.
Hofrat-en-Nahas
Fachoda
Sobat R.
CONGO FRANÇAIS
M'bomou R.
Ouellé R.
Lado
Nil Fl.
ÉTAT DU CONGO

BIBLIOTHÈQUE

Source: Livre Jaune edition, 1899 Declaration.

4.51 This map is the Achilles heel of Chad's case. Yet it is a map that the CM concedes was not annexed to the Declaration but only annexed by the French Foreign Ministry shortly after signature to the version of the Declaration published in the Livre jaune - unilaterally and without prior consultation with the co-signatory, Great Britain, and thus without its consent. Furthermore, as just demonstrated, the Article 3 southeast line shown on the map did not accord with the intent of the parties since its end point intersected 24°E longitude at approximately 19°N latitude instead of 15°35'N. It portrayed an east-southeast line, not a southeast line - hardly a negligible difference since the area encompassed between a line intersecting 24°E at 15°35'N and one intersecting it at 19°N amounts to some 155,942 km^2 or the approximate size of Austria, Switzerland and The Netherlands combined (Map LC-M 19).

4.52 In the analysis that follows, what the CM has to say about the map will be considered first. Then the real facts and the improper use made of the map over the years will be examined, ending up with a demonstration that, without the map to rely on, Chad's case comes crashing to the ground.

4.53 It is useful to begin by taking a look at this map. A full-scale colour reproduction of the map as annexed to the Livre jaune version of the 1899 Declaration appears in the LM as Map No. 40 (referred to at paragraph 5.16 thereof). The Livre jaune version of the Declaration is also annexed to the LM together with the same map[49]. Chad, too, displays a version of the map, at page 162 of the CM. For purposes of comparison, these two reproductions of the map appear here, with Chad's version on the left (Map LC-M 25) and Libya's reproduction of the actual map on the right as a fold-out map (Map LC-M 26). This comparison reveals that the CM has included a map that has been modified to support its contentions, whereas Libya has reproduced the exact map that was annexed to the Livre jaune version of the 1899 Declaration in 1899, a document readily obtainable from the French archives. The Court will note that Chad's version of the map - which appears furthest to the left - is a copy of a reproduced "Extrait" of the Livre jaune map prepared by the "Gouvernement Général de l'Algérie". It is entitled "Extrait de la Carte annexée à la déclaration additionnelle du 21 Mars 1899 à la Convention Franco-Anglaise du 14 Juin 1898"[50]. No date appears on the reproduction.

---

[49] See, LM, International Accords and Agreements Annex, No. 4.

4.54 Comparing this "extract" (Map LC-M 25) to the map Libya has reproduced in the LM as Map No. 40 and again here as Map LC-M 26 - one finds all kinds of differences. But there is one difference that bears directly on the matter of the frontier of Tripolitania. The Livre jaune map - which it will be recalled, according to both France and Chad, was the map referred to in the 1902 Franco-Italian Accord - contains a legend with a combination of different lines and colours to identify the meanings of the lines appearing on the map (Map LC-M 26). The black wavy, dashed line drawn around "Tripolitaine" on the map does not match up with any of the symbols in the legend. In contrast, in Chad's reproduction of the map, this line encircling "Tripolitaine" matches perfectly an entry in that map's legend: "Limite des possessions françaises d'après des conventions antérieures". As a result, the map produced by Chad identifies the wavy, dotted line as an international boundary, whereas the original map, of which it purports to be an "extract", clearly does not. The original map sketches out what at the time was generally regarded to be the frontier of Tripolitania, only a notional boundary[51]; but south of Ghadamès no Tripolitanian boundary had been delimited by 1899 or by 1902. The first delimitation of any part of Libya's frontiers was that accomplished by the 1910 Convention between the Ottoman Empire and France, delimiting the frontier between Ras Ajdir, on the coast, to Ghadamès[52].

4.55 It must be said that the rather academic discussion of maps and their legal significance in the CM, which was directed at this very map[53], has a very hollow ring indeed when the distortion of this map in the CM's "extract", appearing exactly where this discussion occurs in the CM, is fully understood. This distortion - identifying the wavy, dashed line encircling Tripolitania on the map as a conventional boundary - is clearly aimed at supporting two critical elements of Chad's argument that Italy was barred from contesting on legal grounds the 1899 Declaration as "interpreted" by the 1919 Convention. The elements were (i) that in 1902 Italy and France reached agreement as to the boundary of Tripolitania; and (ii) that as a result, Italy renounced any right to base a claim on the Tripolitanian hinterland inherited from the Ottoman Empire. The flaws in these propositions are pointed out below[54]; the distortion of the Livre jaune map in the "extract" appearing in the CM only adds "insult to injury". The first time Libya's western boundary between Ghadamès and Toummo was delimited was in the Franco-Italian Accord of 12 September 1919[55]. It was the first time that both Italy and France had the status to agree such a boundary. Only after the 1912 Treaty of Ouchy did Italy acquire sovereignty over Tripolitania-Cyrenaica and, thus, have the right under international law to settle its boundaries.

---

[50] The very title of the map is obviously misleading, since no map had been annexed to the 1899 Declaration.

[51] See, LM, para. 5.95, et seq.

[52] See, LM, para. 5.111, et seq.

[53] See, CM, pp. 157-165, paras. 54-84.

4.56 In its review of the 1899 Declaration's travaux, the CM studiously avoids any mention of the fact that the British urged that a map actually be annexed, but that the French were very much opposed, ostensibly because to annex a map might have been to recognize in a formal way Great Britain's position in Egypt[56]. In his dispatch to Foreign Minister Delcassé of 25 February 1899, Ambassador Cambon mentioned that, in their agreement of 15 November 1893, Great Britain and Germany had referred to the Justus Perthes map; and he suggested that such a simple reference might be made in the Declaration:

> "Cette simple référence, nous évitant de joindre une carte à notre accord, aurait peut-être l'avantage de ne pas annexer à un document diplomatique un tracé qui, nécessairement, s'étendrait jusque dans la région du Haut-Nil[57]."

The question of annexing a map had particular relevance to the Article 2 sector, for the French military map and the Justus Perthes map would have led to different results. The British pressed to have a map annexed; and at one point in the negotiations the French were ready to cede the point provided France got compensation for doing so. As M. Cambon wrote to M. Delcassé:

---

[54] See, paras. 4.123, et seq., and 4.126, et seq., below.

[55] See, para. 4.245, below, for a discussion of the words "nouvelle frontière", which appear in this Accord.

[56] See, LM, para. 5.29.

[57] LM, French Archives Annex, p. 21.

> "Je veux bien encore céder sur ce point mais il faut absolument une compensation[58]."

At the end of the day, the Declaration neither referred to a map in its text nor annexed a map.

4.57 It is an important point that the French prevailed in their opposition to annexing a map to the Declaration, for to turn around and do so right after signature, in the version of the document published by France, must be taken either as a reprehensible attempt to gain something they were not able to get during the negotiations concerning the direction of the line, or as a purely illustrative act, intended to have no legal consequences at all. The available records make it difficult to decide which was the purpose of M. Delcassé; but the evidence suggests that it was intended at the time to be purely illustrative, and that certainly is how the British perceived the map. It does not appear to have been until around 1914 that the arguments built around this map started to appear in public statements of the French Government[59].

4.58 The CM advances several not very convincing arguments as to why a map was not referred to in or annexed to the 1899 Declaration[60]:

- The map would have shown a gap in the line, since part of the Article 2 sector had not been delimited;

- The negotiations were conducted in such a rush that there was not time to prepare a map;

- In the light of Great Britain's insistence on having a line in Article 3, rather than referring specifically to the regions to be left on the French side of the line, it was only logical to emphasize the verbal description of the line in Article 3 and omit a map.

---

[58] LM, French Archives Annex, p. 35.

[59] See, para. 4.248, below, where the 1914 Marin Report, in which this thought appears, is discussed.

[60] See, CM, p. 160, para. 70.

The first two arguments are easily answered by the fact that the Non-Annexed Map had no difficulty in showing such a gap; and it was printed and published at the very time the Declaration's text was presented to the French Parliament, as the CM points out, so time was hardly a factor. The last argument makes more sense if it is reversed: in placing the emphasis on a line, it would have been all the more important to annex a map unless the Article 3 reference to the direction ("dans la direction du Sud-Est" - "shall run thence to the south-east") intended the line to be precisely southeast in direction, in which event no illustration would be necessary since it could easily be calculated without a map.

4.59 The CM suggests that the negotiators were so steeped in maps that it never occurred to them that the text they prepared for Article 3 might be ambiguous; and that once the Declaration had been signed, M. Delcassé and his "services" on examination realized how ambiguous Article 3 was and quickly annexed a map to correct this defect[61]. This is not very convincing. In the first place there is evidence to show that M. Delcassé intended the map only to be illustrative. Perhaps inadvertently, the CM refers to and annexes a document that confirms that the map was intended by the French Government to be illustrative only. This is a dispatch from M. Delcassé to M. Cambon dated 25 March 1899 informing him that the Livre jaune edition of the Declaration was being distributed that day "avec une carte indicative"[62]. Unless what M. Delcassé did was intended to be purely illustrative, his action in annexing the map, without consultation with the British, was in conflict with the agreed treaty and could be given no legal effect.

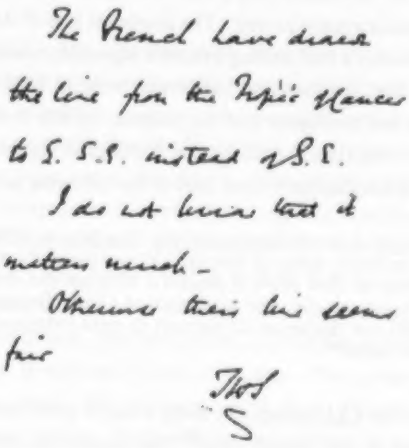
4.60 The CM states that it is "évidemment impensable" that the British authorities did not know about this map at the time. Indeed they did promptly learn of the map, as the documentary evidence in the Foreign Office archives reveals. This is established by one of the most interesting and important

---

[61] See, CM, pp. 160-161, paras. 71-72.

[62] CM, pp. 161 and 163, para. 75, and Annex 57.

documents in this case - a document that Chad has not referred to. It was annexed to the LM, and the hand-written text is reproduced here:



The French have drawn
the line from the Tropic of Cancer
to E.S.E. instead of S.E.
I do not believe that it
matters much -
Otherwise their line seems
fair
TWS
S

This was a note, written on 27 March 1899 by Sir Thomas Sanderson, British Ambassador in Paris, to Lord Salisbury, with which was enclosed a copy of the Livre jaune version of the Declaration and the map annexed to it[63]. The initials at the bottom - "TWS" - were those of the Ambassador. The "S" under these initials was Lord Salisbury's way of acknowledging that he had read something.

4.61 In the first sentence - "The French have drawn the line from the Tropic of Cancer to E.S.E. [east-southeast] instead of S.E. [southeast]" - the Ambassador notes the discrepancy between the direction of the line on the map (ESE) and the Article 3 line intended (SE), at least as seen by the British. There could be no more telling evidence of the intent of one of the signatories of the Declaration than this.

---

[63] See, LM, British Archives Annex, p. 37.

4.62 The note then adds: "I do not know that it matters much". Why would he say that? No doubt because the map was assumed to be illustrative only, and without legal effect. After all, it had not been referred to in or annexed to the signed document; and the French Government had entirely on their own annexed it to the version they published, without consultation with the British. There is a second reason as well. The southeast line of Article 3 was not a boundary line; it was only a line limiting France's expansion toward the Nile. As both Lord Salisbury and Ambassador Sanderson were to emphasize later, in explanations given to the Ottomans and the Italians, Article 3 was intended to have only a negative character. Ambassador Sanderson explained this to the French Ambassador in London on 4 April 1899 in the following way:

> "... the paragraph of the declaration of the 21st March, 1899, which related to the territory north of latitude 15°, was carefully worded in a negative sense, so that while it placed a limit on the eventual[64] advance of France to the eastward and of Great Britain to the westward, it did not recognise or purport to pass judgment on any other rights or claims[65]."

4.63 The CM attempts to make a major point out of the absence of any British protest to the French map[66]; but there was nothing to protest about, for the reasons given above, particularly since the line was not a boundary line. It was not a situation of such a character as to call for a reaction from the British Government within a reasonable time, in the absence of which acceptance by Great Britain could be presumed[67]. Furthermore, official British maps published not long after showed the Article 3 line as a strict southeast line; and there is no evidence of any French protest[68].

4.64 The final sentence in the Sanderson note - "otherwise their line seems fair" - suggests that the direction of the line shown on the French map was not fair ("otherwise"). However, the British Government in the circumstances evidently chose not to make a fuss over a line drawn inaccurately on an illustrative map that could have had no legal effect and which related, not to a boundary, but to the limits of French expansion at a time when the French had only just reached Lake Chad, hundreds of miles away from the region concerned.

---

[64] As used here, "eventual" has the meaning of "possible", similar to the meaning of the French word "éventuel", and not the American meaning of "certain" or "inevitable", as in: "eventually; why not now".

[65] LM, British Archives Annex, p. 160.

[66] See, e.g., CM, p. 163, para. 77 (iii).

[67] Compare, Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962, p. 23.

[68] See, para. 4.18, above, and Maps LC-M 14A and 14B. See, also, LM, para. 5.182 and Map No. 63.

4.65 The CM maintains that the southeast line on the Non-Annexed Map represented what to the eyes of the French was the agreed line. No evidence is offered to support this assertion; and the evidence from the French archives suggests otherwise[69], as does an examination of the BCAF map that appears at page 146 of the CM[70]. The BCAF map (see Map LC-M 17 referred to in paragraph 4.33 above) portrays the southeast line in relation to certain geographical locations and features: Tibesti, Borkou, Ounianga, Erdi (spelled "Erdebe") and Ennedi. It is evident that this map is geographically primitive and inaccurate[71]. For example, the configuration of the Tibesti *massif* is not at all as portrayed. But this was the state of knowledge of the geography of the area in Great Britain and France at the time. The southeast line shown on the BCAF map, lies almost 200 kilometres north of the Tibesti *massif*, which had no justification in the *travaux*. Moreover, the line is drawn as a solid line, just like the southern sector line as far north as 11°N, which was intended to be a boundary line, the inference to be drawn being that the southeast line, too, was a boundary line, which was not the intention of the parties in Article 3 of the 1899 Declaration, as the CM concedes.

4.66 Thus, unless the Non-Annexed Map was intended by the French Government to be purely illustrative ("indicative", as M. Delcassé had put it), the publication of the map was a furtive attempt to move the agreed line northward. Although the Non-Annexed Map may have been widely disseminated with the *Livre jaune* text of the Declaration, the French Government's intention - if indeed it was to change the line - was not; and the British Government had no reason to suspect the French Government of any such a thing, particularly in the light of M. Cambon's strong objection during the negotiations to Lord Salisbury's proposal to start the Article 3 sector line at 18°N latitude (and presumably no further east than 23°E longitude).

---

[69] *See*, para. 4.59, above.

[70] *See*, para. 4.34, above. It should be noted that the BCAF was a publication of the French colonialists, which closely followed events affecting French colonial interests. It was a most effective organ of a well-organized, powerful group.

[71] *See*, also, Maps LC-M 22, 23 and 24, referred to at para. 4.71, below.

4.67 The CM discusses at some length the legal implications of the Non-Annexed Map. Citing a passage from the Burkina-Faso/Mali case in which the Court described several different categories into which boundary maps might fall[72], the CM admits that the Non-Annexed Map did not qualify as having "une valeur juridique intrinsèque"[73]. On the other hand, the CM argues that it is not merely an "élément de preuve extrinsèque", either. To quote from the CM:

> "... établie par l'une des parties à titre illustratif, largement diffusée - notamment aux assemblées parlementaires[74] -, et non récusée par l'autre partie, elle traduit de manière convaincante leur intention commune et présente à ce titre une valeur probante, certes pas irréfragable, mais considérable."

Of course, the important part of the above remark is that the map was intended only to be "illustratif" (or as M. Delcassé expressed it, "indicatif").

4.68 The CM then goes on to say the following:

> "L'attitude de la Grande-Bretagne à l'égard de la carte en question rejoint celle de la France et leur attitude commune peut s'analyser en un accord tacite, interprétation authentique de la Déclaration[75]."

The evidence directly refutes such a fanciful suggestion; and to summarize what has been pointed out earlier to demonstrate how wrong this contention is, these are the elements of evidence that contradict the CM's conclusions:

- The evidence establishes that the British Government - in fact the British officials directly involved - immediately recognized the map as not reflecting the direction of the Article 3 line intended by the parties;

---

[72] Frontier Dispute, Judgment, I.C.J. Reports 1986, p. 554.

[73] CM, p. 164, para. 80.

[74] Only in the French Parliament, it must be noted: not the British Parliament.

[75] CM, p. 164, para. 81.

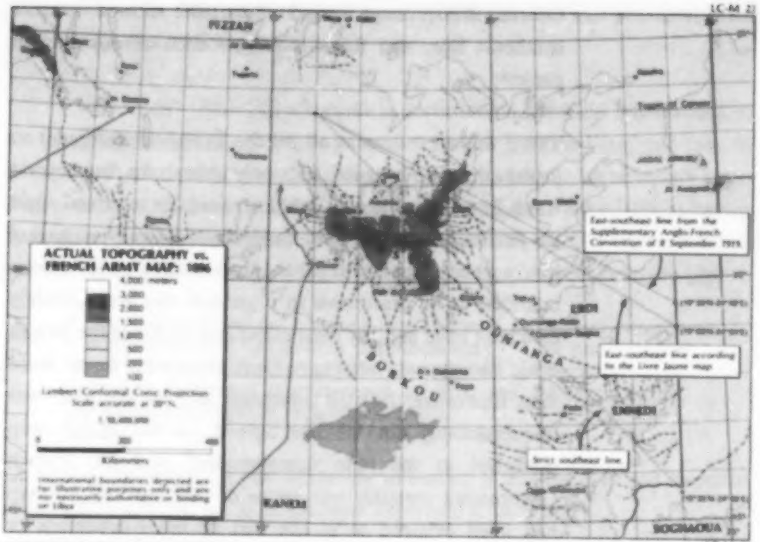
- Official British maps issued after 1899 showed a strict southeast line; and there is no evidence of any French protest;

- There was no reason at all for the British Government to protest the map because: (i) it only indicated a line beyond which France's territorial ambitions were not to extend - and the French at the time were hundreds of miles away, having just reached Lake Chad; (ii) the map could only have been intended to be illustrative in a general way and certainly could not have had any legal effect and, so far as the British could have known, must have been intended to be no more than illustrative; (iii) the southeast line on the map was unquestionably not the line agreed, as the BCAF map published at the time demonstrated; and the French Government certainly was aware of this; and (iv) no map had been referred to in the text of the Declaration or annexed thereto, and this was due to French insistence that no map be annexed;

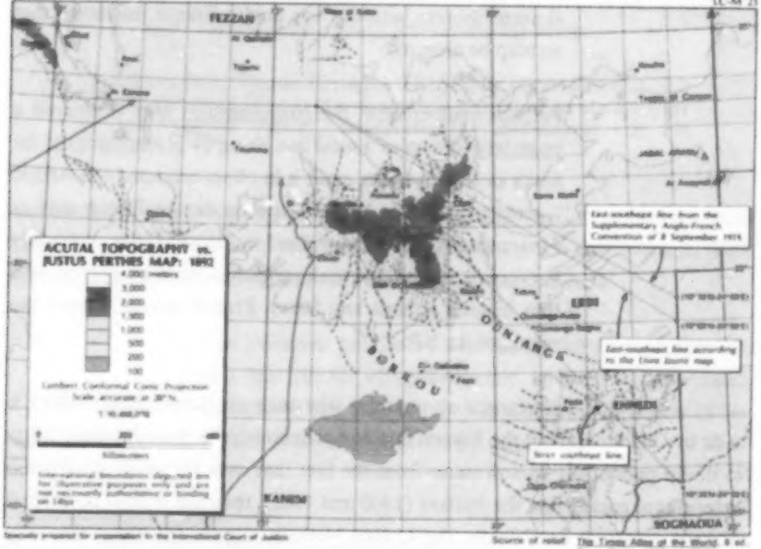
- Perhaps inadvertently, the Non-Annexed Map portrayed a boundary (drawn as a solid line along 24°E longitude) as far north as 19°N latitude, since it in effect extended the Article 2 sector; this might have been seen on the British side as advantageous since it pushed northward the boundary between British and French territories, at least inter se, and thus insured against any future French moves toward the region of the Nile.

4.69 It remains to consider why such an extraordinary effort is made by Chad to defend the French position concerning the Non-Annexed Map. No doubt part of the reason stems from the fact that over the years the French Government misled first the Italians (1900 and 1902), then the British on several different occasions and, finally, the United Nations, repeatedly, about this map and its status. After independence, Chad picked up the banner from France, and continued to mischaracterize the map, no doubt in all innocence, fully believing that a map had been annexed to the 1899 Declaration, just as Signor Visconti-Venosta in 1900 and Signor Prinetti in 1902 had been led to believe.

LC-M 21


FEZZAN
ACTUAL TOPOGRAPHY vs. FRENCH ARMY MAP: 1896
4,000 meters
3,000
2,000
1,500
1,000
500
200
100
Lambert Conformal Conic Projection
Scale accurate at 20°N.
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
East-southeast line according to the Livre Jaune map
Strict southeast line
BORKOU
OUNIANGA
ENNEDI
ERDI
KANEM
SOGHAOUA

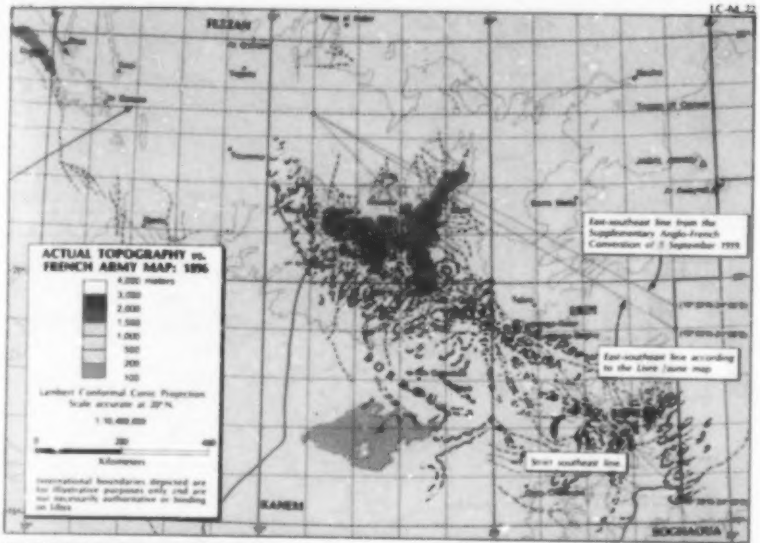
LC-M 2


FEZZAN
ACUTAL TOPOGRAPHY vs. JUSTUS PERTHES MAP: 1892
4,000 meters
3,000
2,000
1,500
1,000
500
200
100
Lambert Conformal Conic Projection
Scale accurate at 20°N.
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
East-southeast line according to the Livre Jaune map
Strict southeast line
BORKOU
OUNIANGA
ENNEDI
ERDI
KANEM
SOGHAOUA

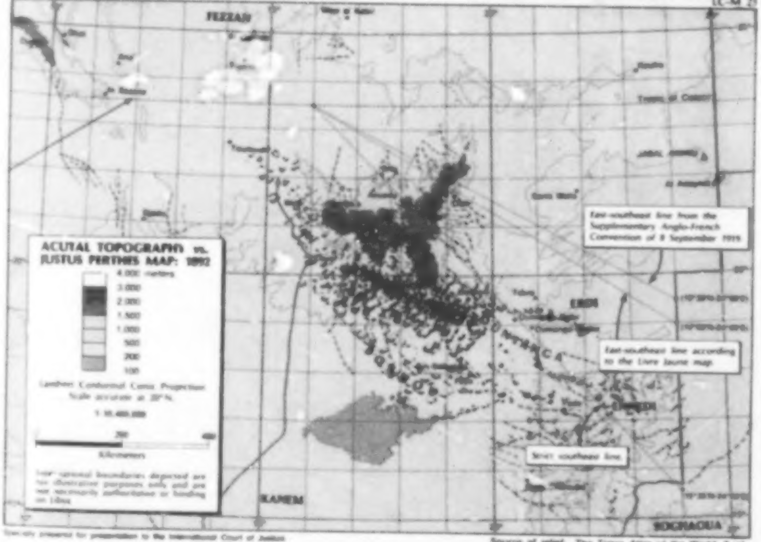
Specially prepared for presentation to the International Court of Justice

Source of relief: The Times Atlas of the World, 6 ed. Times Books, 1980, p. 85.

LC-M 22

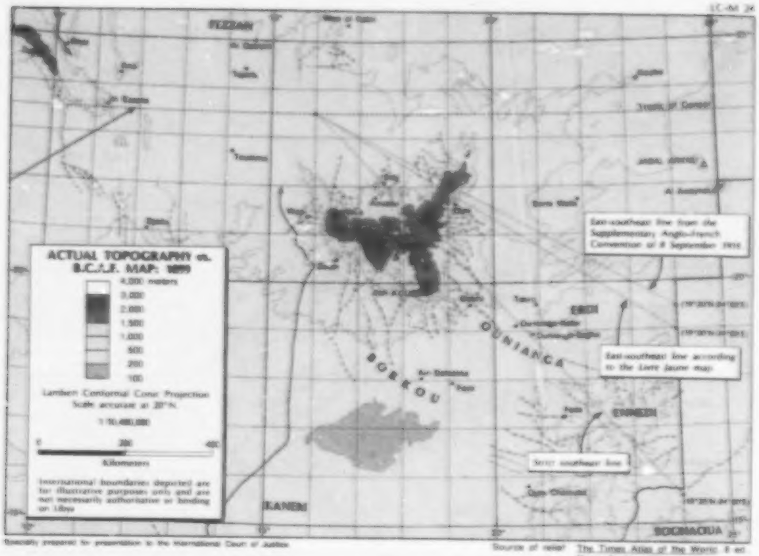

FEZZAN
ACTUAL TOPOGRAPHY vs. FRENCH ARMY MAP: 1896
4,000 meters
3,000
2,000
1,500
1,000
500
200
100
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:10,400,000
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
East-southeast line according to the Livre Jaune map
Strict southeast line
ERDI
BORKOU
KANEM
SOGHAOUA

LC-M 23


FEZZAN
ACUTAL TOPOGRAPHY vs. JUSTUS PERTHES MAP: 1892
4,000 meters
3,000
2,000
1,500
1,000
500
200
100
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:10,400,000
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
East-southeast line according to the Livre Jaune map
Strict southeast line
ERDI
KANEM
SOGHAOUA

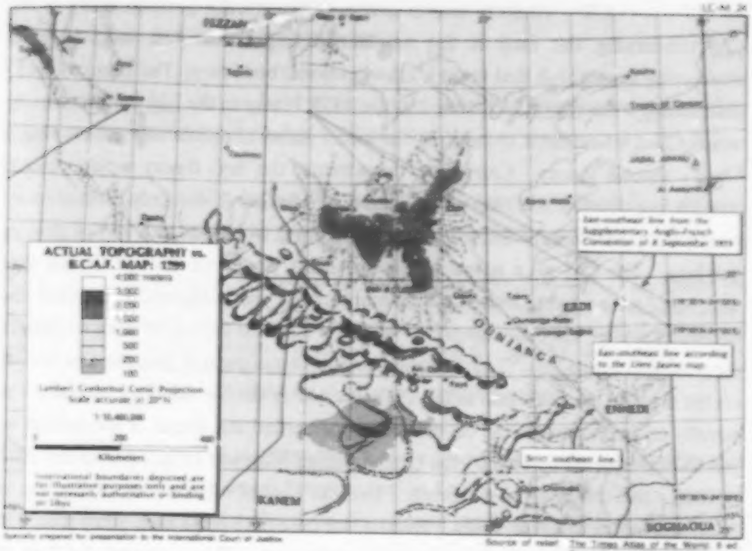
Specially prepared for presentation to the International Court of Justice

Source of relief: The Times Atlas of the World, 6 ed. Times Books, 1980, p. 95.


LC-M 24
FEZZAN
Tropic of Cancer
JABAL 'UWAYNAT
Sarra Wells
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
20°
ERDI
OUNIANGA
BORKOU
East-southeast line according to the Livre Jaune map
ENNEDI
Strict southeast line
KANEM
ACTUAL TOPOGRAPHY vs. B.C.A.F. MAP: 1899
4,000 meters
3,000
2,000
1,500
1,000
500
200
100
Lambert Conformal Conic Projection
Scale accurate at 20°N
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya
15°
20°

Specially prepared for presentation to the International Court of Justice

Source of relief: The Times Atlas of the World, 8 ed. Times Books, 1990, p. 85


FEZZAN
Tropic of Cancer
JABAL UWAYNAT
ACTUAL TOPOGRAPHY vs. B.C.A.F. MAP: 1299
4,000 metres
3,000
2,000
1,500
1,000
500
200
100
Lambert Conformal Conic Projection
Scale accurate at 20°N
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
East-southeast line according to the Livre Jaune map
Strict southeast line
OUNIANGA
ERDI
ENNEDI
KANEM

Specially prepared for presentation to the International Court of Justice

Source of relief: The Times Atlas of the World, 6 ed. Times Books, 1980, p. 85.

4.70 Another reason that may explain the position taken in the CM concerning the map is the heightened importance this map plays in attempting to establish that there is a conventional boundary. The crux of Chad's first theory is the renvoi in Article 3 of the 1955 Treaty to the line on this map, by which Chad would hope to leapfrog the whole series of problems encountered in Chad's second theory. Carried to its extreme, the first theory would obviate considering whether the map was annexed or whether it was only illustrative or whether it portrayed the intended line. The renvoi would act as a sort of deus ex machina. The CM even advances the argument, under the second theory, that the renvoi to the 1899 Declaration, in and of itself, was sufficient to establish the boundary since, "à la connaissance de la République du Tchad, ce tracé n'a jamais été modifié depuis lors[76]". It is critical to such an argument that the line shown on the map be the same line as the 1919 line and as the Submissions line; and it is equally critical that this line on the map represented the intent of the parties to the 1899 Declaration. Finally, the Non-Annexed Map was referred to in the 1902 Accord - and it is upon that reference that the alleged opposability of the line to Italy, and hence to Libya, relies. When a line on a map plays such a key role, it is not surprising that every effort has been made in the CM to present the map in the best light possible. Thus, it is all the more astonishing that the CM has reproduced it as a tampered-with "extract".

4.71 In spite of such a heavy reliance on the Non-Annexed Map and on the other contemporary maps (the 1892 Justus Perthes map, the 1895-1896 French military map, and the BCAF sketch map), the CM reflects a failure to have really looked at them. A strict southeast line drawn on these maps would have left on the French side of the line virtually all the regions now comprising the so-called "B.E.T.", as these regions appeared on those maps. This is again demonstrated on Maps LC-M 22, 23 and 24, which are overlay maps on which the topography set out on each of the three older maps just mentioned has been placed over a 1990 topographic map. The change in knowledge of the location of topographic features is startling. The line drawn by the French on the Non-Annexed Map (identified on each map as the east-southeast line according to the Livre jaune map) was far to the north of the Tibesti massif as shown on the maps available in 1899. It is inconceivable that such a line was intended by the parties;

---

[76] See, e.g., CM, p. 166, para. 85.

but so far as the British were concerned at the time, it was only an illustrative sketch map and so it "didn't matter much".

4.72 In the light of the above, the CM's conclusions concerning this map are conspicuously wrong[77]. These are:

- The parties to the 1899 Declaration intended to delimit precisely their respective zones of influence;

Comment: There was no delimitation involved; a line was drawn to limit the extent of France's territorial expansion toward the Nile. Article 3 accorded no recognition to any French zone of influence; and the British repeatedly emphasized - to the Ottomans, to the Italians and to the French themselves - that no rights to territory were recognized, for the line had only a negative sense.

- The resulting text, however, turned out to be ambiguous and the words "en principe" in Article 3 show that only a general indication of the direction of the line was intended;

Comment: To the contrary, the direction was precisely stated; represented on a map as a strict southeast line, the line carried out the intentions of the parties based on the geography of the area as it was understood at the time and shown on contemporary maps. The words "en principe" appear twice in Article 2 (for the segment of the line to 11°N and the segment between 11°N and 15°N), which contemplated an exact boundary delimitation. In Article 3, the words do not modify the direction of the line but relate to the limitation imposed on the French zone. As the LM explains, these words no doubt were inserted in anticipation of Ottoman concern[78].

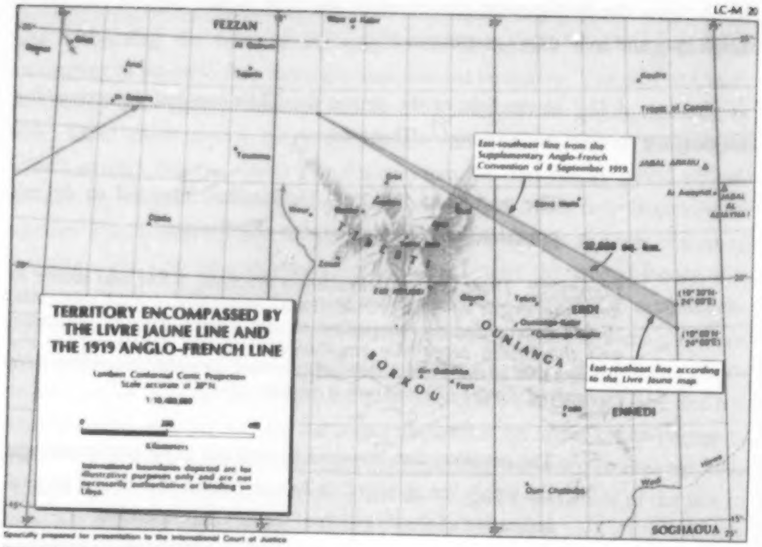
- The end point of the southeast line was intended to intersect 24°E "nettement au nord" of 15°N and necessarily north of 18°N;

Comment: The travaux establish quite the opposite: it was M. Cambon who objected to Lord Salisbury's 19 March draft fixing the point at 18°N, as "pushing" the line too far north. So the starting point was changed back to 15°N. The CM has discussed and annexed incomplete travaux, and has, as a result, seriously misinterpreted the documentary evidence.

---

[77] See, CM, p. 165, para. 83.

[78] See, LM, para. 5.39.


LC-M 20
FEZZAN
Al Qaṭrūn
Tajarhi
Tropic of Cancer
JABAL ARKANU
JABAL AL AWAYNAT
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
T I B E S T I
20,000 sq. km.
(19° 30'N-24° 00'E)
(19° 00'N-24° 00'E)
ERDI
O U N I A N G A
B O R K O U
East-southeast line according to the Livre Jaune map
ENNEDI
Oum Chalouba
SOGHAOUA

TERRITORY ENCOMPASSED BY THE LIVRE JAUNE LINE AND THE 1919 ANGLO-FRENCH LINE

Lambert Conformal Conic Projection
Scale accurate at 20°N
1:10,400,000

Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.

Specially prepared for presentation to the International Court of Justice

London
Paris

AREA COMPARISON

- The line on France's map (the Non-Annexed Map) had the effect of leaving in the French zone all of the "B.E.T.", as shown on contemporary maps;

Comment: True; but so does a strict southeast line when drawn on the maps which were spread out before the negotiators in 1899.

- The end point of the line on this map was at the intersection of 24°E and 19°30'N, "au moins approximative";

Comment: False; the end point was at about 19°N, not a negligible difference - the area falling between these two lines comprises some 22,828 km^2, approximately half the size of Switzerland or Denmark (Map LC-M 20). Official French dispatches and illustrative sketch maps over the years that followed showed these lines to be quite different[79]*.*

- The final paragraph of the Anglo-French Convention of 8 September 1919 sets out a verbal description of the same line ("une description littéraire de la ligne figurant sur cette carte"[80]);

Comment: Incorrect, for the reasons given above; 19°N is not the same line as 19°30'N, just as a map that was not annexed to the Declaration cannot be called the "annexed map" (as the CM repeatedly refers to this map).

CHAPTER IV. THE 1900-1902 ACCORDS

4.73 Among the more conspicuous omissions from the list in Annex I of the 1955 Treaty were the 1900 Franco-Italian Accord and the 1902 Anglo-Italian Accord (which was signed prior to the 1902 Franco-Italian Accord).

4.74 It appears evident that the 1900 Accord was left out by mistake - in the rush to prepare and table this list as part of Annex I in the closing hours of negotiations in August 1955. For the 1902 Accord appears in Annex I as "les accords franco-italiens du 1er novembre 1902"; but there was only one accord, expressed as an exchange of letters, just like the 1900 Accord. The 1900 and 1902 Accords have always been considered together because the latter refers to the former and explains and enlarges on it. It looks very much as if the "s" added to "accord" was there because the 1900 Accord had been intended to appear there but was omitted by mistake.

---

[79] See, e.g., LM, para. 5.271, which discusses a 1930 dispatch in which French Ambassador Beaumarchais discloses that he had been authorized to renounce in favour of Italy the difference between the line on the Livre jaune map and the 1919 line.

[80] CM, p. 165, para. 84.

4.75 The CM reflects some embarrassment over this; for it advances the rather weak explanation, seemingly to cover up the mistake, that although there was only one 1902 Accord it was made up of a series of letters exchanged and it completed an earlier exchange (that is the 1900 Accord, which was carelessly overlooked), and hence the use of the plural term "Accords"[81]. It is indeed embarrassing that the 1900 Accord was omitted; but it did not matter much, since being on or off the Annex I list did not establish whether an agreement was "en vigueur" in 1951, the overriding criterion of Article 3 of the 1955 Treaty. Chad has produced evidence in the CM to establish that neither the 1900 nor the 1902 Accord was "en vigueur" in 1951[82].

4.76 Accordingly, the 1900-1902 Franco-Italian Accords will be considered together.

SECTION 1. Background of the Accords

4.77 It is important to understand the background of these Accords, for the CM gives an inaccurate account, slanted to support its interpretation of them. This background is initially discussed in the CM's Introduction, described there as being a situation where Italy was seeking English and French recognition of an Italian sphere of influence in Tripolitania in return for Italy's acceptance of the Anglo-French "partage".

4.78 This is not at all the case. Italy did seek to have its position recognized as heir-apparent to Tripolitania in the event of the collapse of the Ottoman Empire, but the proposal was rejected out of hand by the British and the French[83]. Furthermore, as Great Britain repeatedly told everyone, the 1899 Declaration did not involve any assertion or recognition of the acquisition of rights by France north of 15°N latitude; it was not a "partage" or a delimitation.

---

[81] CM, p. 166, para. 88.

[82] CM, Annex 210.

[83] See, LM, paras. 5.51 and 5.59-5.65.

The CM consistently disregards the fact that, prior to the 1912 Treaty of Ouchy, Italy was only a concerned bystander, anxious to preserve the status quo in the Mediterranean and to have undertakings from Great Britain and France that the 1899 Declaration did not imply that either Power had designs on Tripolitania. But Tripolitania was then under Ottoman sovereignty, and Tripolitania's hinterland rights were an Ottoman concern. Italy had no status to agree to anything in respect to any boundaries or territorial claims in the region; and the 1902 Accord was not at all the recognition by France of an Italian zone of influence in Tripolitania, as the CM wrongly contends[84].

4.79 The CM attempts to develop two other themes: (i) that the Italian Government disavowed the Ottoman claim to a Tripolitanian hinterland, thereby laying the groundwork for what the CM claims was a renunciation by Italy in the 1902 Accord of any claim to Ottoman rights in the hinterland; and (ii) that slowly but surely Italy came to recognize formally the Anglo-French "partage". These dual themes are expressed in this way in the CM:

> "L'Italie a, par la voix de ses représentants les plus autorisés, fait immédiatement savoir qu'elle se désolidarisait de la Sublime Porte et, progressivement, elle en est venue à reconnaître formellement le partage franco-britannique[85]."

The support for these arguments is said to be found in three events: (i) a speech of Foreign Minister Admiral Canevaro to the Italian Senate on 24 April 1899[86]; (ii) the 1900 Accord[87]; and (iii) a declaration of Foreign Minister Prinetti to the Italian Parliament on 14 December 1901[88]. Each will be discussed in turn below in an analysis that demonstrates that none had the meaning or effect ascribed to them in the CM.

---

[84] See, CM, p. 21, para. 18.

[85] CM, p. 167, para. 91.

[86] CM, Annex 60.

[87] LM, International Accords and Agreements Annex, No. 5.

[88] CM, Annex 333; see, LM, paras. 5.74-5.75.

SECTION 2. Canevaro Speech (1899)

4.80 According to the CM, in this speech Admiral Canevaro "implicitly approved" the 1899 Declaration at the same time as he "denounced the exaggerations" set out in the Ottoman protests against the Declaration. Chad has only annexed short extracts from the speech taken from the BCAF[89], although the original text was deposited with the Registrar as a Production. Libya has annexed hereto the text and a full translation[90].

4.81 Admiral Canevaro's tour d'horizon - purely descriptive in character - is taken by Chad to constitute, first, a formal recognition, in principle, of the "bien-fondé" of the acquisition by the Powers of zones of influence in this part of Africa; and second, Italy's renunciation of posing as successor to Turkey's claimed rights, "droits qu'elle lui conteste formellement ..."[91]. In its Introduction, the CM describes the speech as an "implicit approval" of the 1899 Declaration and a "denunciation of the exaggerations" contained in the Porte's protest against the Declaration. The CM attempts to make these conclusions regarding the speech appear reasonable by adding:

> "Sans doute, ce discours ne constitue-t-il pas - pas encore - la reconnaissance expresse du tracé de la limite de l'expansion française convenue entre la France et la Grande-Bretagne en 1899[92]."

4.82 Of course, as to the first point, Chad's basic premise is wrong. North of 15°N latitude, the 1899 Declaration involved no assertion of any territorial rights or interests. The British insisted that the text of Article 3 reflected no recognition on their part of French rights; the southeast line had only a negative sense. Regrettably, the CM has failed to refer to the evidence during the period 1899-1902 that reveals Italy's real views[93]. This evidence includes:

---

[89] CM, Annex 60.

[90] Speech of Foreign Minister Admiral Canevaro to the Italian Senate on 24 April 1899, Exhibit LC-M 11, hereto.

[91] CM, p. 168, para. 94.

[92] Ibid.

[93] See, LM, para. 5.59, et seq.

- British reassurances to Italy by Lord Salisbury in 1899 and Lord Currie in 1902[94];

- Italian statements to the British in 1898, 1899 and 1902 that so long as the 1899 Declaration affected only regions south of 15°N latitude it was of no concern to Italy[95]; in 1898 Admiral Canevaro had said, however, even before the Declaration had been negotiated, that should its effect -

  > "... extend north of that parallel, so as to include part of the Hinterland of Tripoli, the status quo in the Mediterranean, which Italy regarded as of such vital importance, would be affected[96]."

- The remonstrations made by Admiral Canevaro to the British and the French immediately after the Declaration became known, prompting French Ambassador Barrère to suggest that he be authorized:

  > "... à déclarer le cas échéant que nous n'avons aucune vue sur la Tripolitaine et sur son hinterland légitime (puis-je dire cela?)[97]."

Italy was in no position to make a formal protest; Tripolitania was under Ottoman sovereignty, and it was up to the Porte to protest any violation of its hinterland, which indeed the Porte did most vigorously at the time. So Italy's potential interests were protected. Neither Admiral Canevaro nor Messrs. Visconti-Venosta or Prinetti expressed any views that could be interpreted as an "implicit approval" or a recognition of the "bien-fondé" of an extension of the French zone of influence into the area above 15°N latitude. In fact that would have been quite impossible: the 1899 Declaration contained no assertion or recognition of territorial rights north of 15°N latitude[98].

---

[94] See, LM, para. 5.59.

[95] See, LM, para. 5.61.

[96] LM, British Archives Annex, pp. 73-75. It is interesting to note how carefully Italy expressed its interest. It was for the Ottoman Empire to protest intrusions on its hinterland rights; but Italy had a legitimate interest, guaranteed by Treaty, to see that the status quo in the Mediterranean was maintained.

[97] LM, French Archives Annex, p. 49.

4.83 As to the second point, relating to what is described variously in the CM as a denunciation of the Ottomans' exaggerated hinterland claim or as renunciation by Italy of any claim to Ottoman hinterland rights, it is true that Admiral Canevaro, in his speech, made a few disparaging remarks about the extent of the Ottoman claim. This was a rather harmless way to curry favour with the French, from whom he was trying to get a declaration concerning Tripolitania, and to please Italy's partner in the Triple Alliance, Germany; for the 1890 Ottoman claim extended far south of Lake Chad into a region that Germany and Great Britain had only recently divided between them (Map LC-M 12 referred to at paragraph 4.11 above).

4.84 Italy's concerns would have been aroused only if territory to the north of 15°N latitude became involved; and Great Britain had assured Italy that the Declaration had not affected any territorial rights in that region. The 1890 Ottoman claim had a certain logic, for it was constructed around the trade routes. However, its southern reach became unrealistic in the face of the fast-moving events occurring in the region south of Lake Chad. Admiral Canevaro's remarks may have been critical of the extent of the Ottoman claim; but his position had been made clear that Italy regarded any assertion by the French of rights north of 15°N as threatening the status quo.

SECTION 3. Prinetti Declaration (1901)

4.85 Prinetti became Italian Foreign Minister not long after his predecessor, Visconti-Venosta, had completed the exchange of letters with Ambassador Barrère that constituted the 1900 Accord[99]. He wanted to make public that part of the 1900 Accord relating to Tripoli[100]. After a long period of discussion, the text of what he might say regarding that secret Accord was agreed, word-for-word, with the French Government; and he included the agreed statement in a speech to the Italian Parliament on 14 December 1901.

---

[98] In his speech, Admiral Canevaro expressly took note of the fact that the 1899 Declaration "has a negative character and is binding only on the two countries who signed it ...". Exhibit LC-M 11, hereto, p. 4 of the English translation.

[99] The 1900 Accord is taken up in Section 4, below, since it is linked to the 1902 Accord.

[100] See, LM, para. 5.74, et seq.

4.86 The CM contends that this statement confirmed the 1900 Accord concerning the limits of the French zone of influence[101]. Shortly after Prinetti's speech, the French Foreign Minister Delcassé, in a speech to the Chambre des Députés on 21 January 1902, also made a reference to the 1899 Declaration and its relationship to Italy. The CM argues that the "parallélisme" of these two statements and "l'identité des termes utilisés" were striking and confirmed the agreement between the two countries as to the limit of the French zone of influence[102].

4.87 A comparison of the Italian and French statements reveals this is not so at all. Signor Prinetti's carefully worded statement, in the translation set out in the CM, advised the Italian Parliament that France had assured Italy that the 1899 Declaration:

> "... marquait pour la France, par rapport à la région attenante à la frontière orientale de ses possessions africaines et en particulier par rapport au vilayet de Tripoli, province de l'Empire turc, une limite qu'il n'avait pas l'intention de dépasser ...[103]."

The CM wrongly paraphrases this statement this way: that the assurances given Italy were that the Declaration "marque la limite de ses possessions africaines par rapport au vilayet de Tripoli"[104]. This paraphrase differs from Signor Prinetti's statement in several respects:

- There was no reference by Prinetti to the limits of France's African possessions; he said that the Declaration marked a limit that France had no intention of exceeding; there is a world of difference between a recognition of a State's possessions (which would imply recognition of the State's effective occupation) and recognition of the fact that a State had agreed that it would not seek to acquire sovereignty beyond a certain limit;

---

[101] See, CM, pp. 172-174, paras. 108-113.

[102] See, CM, p. 172, para. 107.

[103] CM, p. 170, para. 103. Emphasis added. The text of this part of the speech as set out in CM's Annex 333 is incomplete.

[104] CM, p. 171, para. 104.

- Prinetti defined the limit that France did not intend to exceed as being "par rapport à la région attenante à la frontière orientale de ses possessions africaines et en particulier par rapport au vilayet de Tripoli"[105].

4.88 This difference can be seen on the map (Map LC-M 27). The French limit Signor Prinetti referred to only concerned the region to the east of the eastern frontier of France's African possessions in 1899, which is shaded red. At that time, France's African possessions were Tunisia and Algeria; in the south, the French were only just arriving at Lake Chad. The map shows the notional frontier of the vilayet of Tripoli as it appeared on the Non-Annexed Map. Signor Prinetti's statement could not have concerned any French territory east of Toummo, and probably not even so far to the south and east. The CM's paraphrase of his statement obscures this fact and, as there summarized, could conceivably have embraced the entire area up to the southeast line shown on the map.

4.89 Turning to M. Delcassé's supposedly parallel speech using identical terms, an examination of the text demonstrates that he did not say the same thing at all as Signor Prinetti. In fact, his speech greatly expanded the effect of the Declaration, at least as conceived and publicly explained by the British. M. Delcassé described the Declaration as "enveloppant définitivement" the territories of Borkou, Tibesti, Kanem, Baghirmi and Ouadaï. (It is interesting to note in passing that missing from the list were the regions of Ounianga, Erdi and Ennedi, revealing that France's interests lay in the western sector of the borderlands region.) M. Delcassé then added that the Declaration:

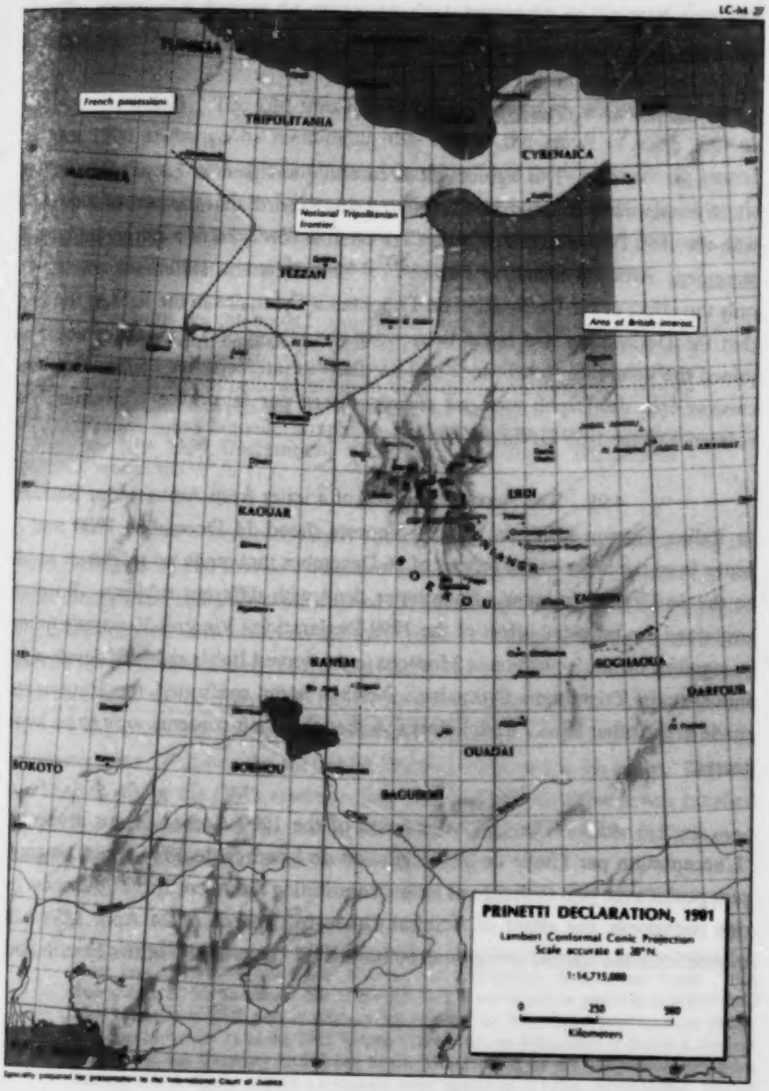
> "... forme ainsi pour nous, par rapport aux autres pays et régions attenant à la frontière orientale de notre domaine africain, une limite que nous n'avons pas l'intention de dépasser ...[106]."

---

[105] A more precise translation would replace "attenante" by "contiguë" and "en particulier" by "précisément" or "notamment".

[106] CM, Annex 334.

LC-M 27


TUNISIA
French possessions
TRIPOLITANIA
ALGERIA
CYRENAICA
Notional Tripolitanian frontier
FEZZAN
Area of British interest
ERDI
KAOUAR
B O R K O U
ENNEDI
KANEM
ZOGHAOUA
DARFOUR
OUADAI
SOKOTO
BORNOU
BAGUIRMI

PRINETTI DECLARATION, 1901

Lambert Conformal Conic Projection
Scale accurate at 20°N.

1:14,715,000

0 250 500
Kilometers

Specially prepared for presentation to the International Court of Justice

The "parallélisme" and "identité des termes utilisés" are totally missing. Signor Prinetti's speech concerned no region lying east of Toummo.

SECTION 4. The 1900 Accord

4.90 This agreement is carefully analysed in Libya's Memorial, which emphasizes the important fact about this Accord: that the part of it dealing with the 1899 Declaration's effect on Tripolitania consisted of a purely unilateral statement made on behalf of France[107]. This unilateral statement concerned only the effect of the Declaration on Tripolitania-Cyrenaica in the light of the fact that the Declaration had failed to mention the vilayet of Tripoli, to which was joined the assurance that France had no plans to intercept "les communications caravanières de Tripoli avec les régions visées par la susdite convention", a reference to the 1899 Declaration.

4.91 The Accord consisted of a letter from Ambassador Barrère to Italian Foreign Minister Visconti-Venosta dated 14 December 1900 and a letter from the latter to the former of 16 December that made no reference at all to the 14 December letter. Each letter dealt with different subjects. Barrère explained the intended effect of the 1899 Declaration. Visconti-Venosta's letter recognized France's position in Morocco and reserved Italy's rights to develop its influence in Tripolitania-Cyrenaica. Neither letter confirmed the statements made in the other letter. Both letters specified that their contents were to be kept secret.

4.92 The CM's discussion of the 1900 Accord begins abruptly: "L'acceptation par l'Italie de la Déclaration de Londres de 1899 prend un tour plus positif avec [the exchange of letters constituting the Accord][108]." Already, in one paragraph, the effect of Admiral Canevaro's speech of 24 April 1899 has moved from the alleged recognition by Italy of the "bien-fondé" of the French and

---

[107] See, LM, para. 5.67, et seq. The letters constituting the Accord were annexed in the International Accords and Agreements Annex, No. 5.

[108] CM, p. 168, para. 95.

British zones of influence in Africa to the acceptance by Italy of the 1899 Declaration[109].

4.93 The CM tries to circumvent the strictly unilateral character of the 1900 exchange by mentioning that it was the result of long, difficult negotiations and ended up as an "accord équilibré"; but there is no getting around the form and content of the letters exchanged - it was not a bilateral agreement in any sense of the term. The letters were unilateral statements of position. It is therefore totally incorrect to describe the Accord in the following way:

> "Il résulte de cet accord que l'Italie reconnaît non seulement la validité de principe du partage opéré par [the 1899 Declaration] - ce qu'avait déjà fait l'Amiral CANEVARO l'année précédente -, mais également celle de la limite de la sphère d'influence française en résultant et qu'elle se satisfait de l'assurance donnée par la France selon laquelle la sphère d'influence française déterminée par [the 1899 Declaration] n'empiètera pas sur la Tripolitaine - Cyrénaïque[110]."

4.94 Italy recognized nothing at all in this Accord concerning the 1899 Declaration; and France's unilateral statement dealing with the effect of the 1899 Declaration referred to the limit of the French sphere vis-à-vis Tripolitania - Cyrenaica as well as its effect on the trade routes running from Tripoli south into the Sudan[111]. The reason for this is evident: the 1899 Declaration had omitted any reference to the vilayet of Tripoli (which embraced both Tripolitania and Cyrenaica), and Italy wanted to understand what the consequences of such an omission were. This was the subject M. Barrère addressed in his letter. There is no basis at all for the CM's assertion that Italy had indicated that it was satisfied by France's assurance, in any event; and Signor Visconti-Venosta did not even acknowledge it in his letter constituting the exchange.

---

[109] Compare, CM, p. 168, paras. 94 and 95. However, the CM makes an important admission here: that the 1900 Accord was certainly not a boundary delimitation treaty. The importance of this admission lies in the fact that it would not be possible to argue that, even though the 1900 Accord was not "en vigueur" in 1951, under international law as reflected in Article 11 of the 1978 Vienna Convention on Succession of States in respect of Treaties, the boundary established by the 1900 Accord, or the obligations and rights relating to the régime of such a boundary, were passed on to Libya, nevertheless. For no boundary was involved.

[110] CM, p. 169, para. 99.

[111] See, LM, p. 47, fn. 53, where "the Sudan" is defined to mean the area lying south of the Sahara.

4.95 The statement of M. Barrère as to the intent of the Declaration lacked precision[112]. When Signor Prinetti made his carefully worded, pre-negotiated statement on 14 December 1901 disclosing in a guarded fashion France's secret assurance, however, it was clear that both France and Italy - for this was a formally agreed text, as the CM points out - considered France's assurance concerning the effect of the Declaration on Tripolitania-Cyrenaica to concern areas no further south or east than Toummo, as explained and illustrated above (Map LC-M 27). In contrast, the statement in M. Delcassé's speech was a self-serving statement by the French Government that went well beyond the agreement reached with Great Britain in the 1899 Declaration. It is understandable that Italy should subsequently seek to clarify the meaning of France's assurance in 1900. For one thing, as the LM demonstrates, the boundaries of Tripolitania had never been fixed by any form of agreement[113]. This led to the 1902 Franco-Italian Accord.

SECTION 5. The 1902 Accords

4.96 It is the 1902 Franco-Italian Accord to which the following discussion will be primarily directed. But, first, a brief consideration of the other 1902 Accord - the Anglo-Italian Accord - is in order; for there were two 1902 Accords entered into by Italy: one with France; and one with Great Britain, which preceded the 1902 Franco-Italian Accord[114].

(a) The 1902 Anglo-Italian Accord

4.97 The CM states that Chad could find no evidence of such an agreement with Great Britain, although it turned up documents indicating discussions between Italy and Great Britain in 1901-1902 that show Italy seeking from Great Britain assurances similar to the 1900 French assurances[115]. On the basis of these incomplete documents, the CM claims to find evidence of the "reconnaissance par l'Italie" of the 1899 Declaration. The CM goes further as to the significance of this incomplete evidence:

---

[112] The British Foreign Office at the time expressed a lack of understanding as to what M. Barrère meant in this letter. See, para. 4.104, below, fifth item.

[113] See, LM, para. 5.95.

[114] See, LM, paras. 5.103-5.110.

[115] CM, pp. 169-170, paras. 100-101.

> "... cet échange de vues confirme de la manière la plus claire que l'Italie, loin de contester la validité [of the 1899 Declaration], se montre au contraire très soucieuse d'obtenir l'assurance que la ligne convenue constitue une limite de leurs zones d'influence respectives par rapport à la Tripolitaine que ni la France, ni la Grande-Bretagne n'ont l'intention de dépasser[116]."

Libya's Memorial has filled this gap in Chad's research. There was indeed an Accord reached, and it is of an importance equal to that of the 1900-1902 Accords and well deserved a place on the 1955 Treaty's Annex I list, since Great Britain's interpretation of the 1899 Declaration, prima facie, had a value equal to that of its co-signatory.

4.98 The Anglo-Italian Accord does not support the CM's assertions quoted above. This passage from the CM implies that it is meaningful that Italy did not contest the validity of the 1899 Declaration. Why would Italy have wanted to? And on what basis could it have done so, given that the territory was under Ottoman rather than Italian sovereignty? The 1899 Declaration was between Great Britain and France. It is of interest that Germany did raise a question concerning the Declaration in 1899 - a fact the CM makes no reference to at all, but which was discussed in full in the LM[117]. The German enquiry resulted in the German Government making plain that the Declaration was to be regarded as res inter alios acta. However, Germany did have a legitimate concern, for it had recently acquired possessions adjoining the area of Lake Chad, where French troops had just started to appear. In contrast, Italy had no rights whatsoever, in 1899 or in 1902, in this part of Africa; the area was part of what the Ottoman Empire claimed to be the Tripolitanian hinterland. So Italy had no standing even to make a formal enquiry, as Germany did, let alone challenge the Declaration's validity, which neither Italy nor Germany had any reason to do. However, Italy strongly voiced, privately, its concern to both the British and the French, a fact reflected in Admiral Canevaro's speech discussed above[118].

4.99 As to the second part of the passage, Italy was indeed anxious to obtain from Great Britain assurances comparable to the French assurances; in fact, Italy had sought a tripartite agreement of some kind, but this had been rejected[119]. But the 1900 French assurances had nothing to do with "la ligne convenue" between Great Britain and France referred to in this passage - an obvious reference to the Article 3 southeast line. The 1900 Accord only concerned the area no further south or east of Toummo, as explained above.

---

[116] CM, p. 170, para. 101.

[117] LM, paras. 5.56-5.57.

[118] See, para. 4.80, et seq., above.

4.100 It is important at this juncture to grasp why Italy needed assurances from Great Britain as well as from France concerning the effect of the 1899 Declaration. The French assurances in 1900 concerned only the western frontier of Tripolitania and the trade routes on the west running south from Tripoli, for that is where French interests lay and where France's possessions of Algeria and Tunisia were. Indeed, it was to that sector of the Tripolitanian frontier that Signor Prinetti referred in his 1901 speech. It was the British, on the other hand, who were interested in the area to the east of Tripolitania-Cyrenaica (see the area shaded blue on Map LC-M 27 referred to above at paragraph 4.88). Accordingly, whilst the 1900 Accord between France and Italy had nothing to do with the famous southeast line of Article 3 of the 1899 Declaration - for that lay to the east -, but only with the western part of Tripolitania as far as Toummo, the 1902 Accord between Great Britain and Italy was directly concerned with the southeast line, for it affected the eastern limits of Tripolitania-Cyrenaica. Here the British were interested, not the French.

4.101 Like the 1900 Franco-Italian Accord, the 1902 Anglo-Italian Accord was comprised of an exchange of documents:

- A British Declaration dated 11 March 1902, referring to the Article 3 southeast line and stating that (i) the 1899 Declaration did not purport to deal with the rights of other Powers (res inter alios acta), and (ii) in particular, rights in respect to the vilayet of Tripoli and the Mutessarifik of Benghazi remained unaffected[120];

- A further statement in the same British Declaration to the effect that Great Britain had no designs on Tripoli and wished to maintain the status quo in the Mediterranean - but if that should be altered, it should, subject to certain limitations, be altered in conformity with Italian interests;

---

[119] See, LM, para. 5.103.

[120] See, LM, para. 5.107.

- A copy of Lord Lansdowne's dispatch of 7 March 1902, which was a statement of Great Britain's interpretation of the 1899 Declaration;

- A copy of the Barrère letter of 14 December 1900 comprising a part of the 1900 Accord.

Lord Lansdowne's dispatch was handed to Foreign Minster Prinetti on 11 March; on 12 March Lord Currie, the British Ambassador, handed Prinetti the Declaration dated 11 March. At the same time, Prinetti handed Lord Currie a copy of the Barrère letter that was part of the 1900 Accord.

4.102 So far as the present dispute is concerned, the Anglo-Italian Accord is in many ways more significant than the Franco-Italian 1902 Accord that followed it. For the latter was a clarification of the 1900 Accord with respect to the meaning of the 1899 Declaration vis-à-vis Cyrenaica-Tripolitania[121]. The importance of the agreement with Great Britain was that, aside from the assurances covering Tripolitania, the British Government informed the Italians what the British regarded the intent of the Declaration to be.

4.103 The dispatch of 3 February 1902 of Lord Lansdowne, the British Foreign Minister, to Ambassador Currie in Rome is, thus, a key document in this case[122]. This is so not only because of its expression of the British Government's views as to the meaning and effect of the 1899 Declaration, but also because it was formally handed to Italy as part of the exchange of documents constituting the Anglo-Italian 1902 Accord.

4.104 Briefly summarized, this dispatch contained the following important information and explanations:

---

[121] Of course, the 1902 Franco-Italian Accord had considerable importance in other respects. Clarification of the 1900 Accord was only one element of this agreement. See, LM, para. 5.83, et seq.

[122] Its text is set out in LM, British Archives Annex, pp. 73-75. See, also, LM, para. 5.105, et seq.

- It had been prepared in response to Signor Prinetti's complaints that Great Britain had not communicated with Italy about the 1899 Declaration;

- Italy's concern was related to Tripolitania's "hinterland", identified as the area north of 15°N latitude; if the Declaration affected that area, it disturbed the status quo in the Mediterranean in the eyes of the Italian Government;

- Lord Salisbury had understood this in 1899, and as a result the line in the Declaration (Article 3), to the east and west of which Great Britain and France each undertook not to acquire territory or influence, was not drawn further north than 15°N latitude:

> "To the north of that degree the line represents merely the limit beyond which the French Government would not at any time advance its pretensions";

- Article 3 of the Declaration was worded in a negative manner and contained "no recognition of rights nor any pronouncements on territorial claims";

- The British Government had been shown confidentially the text of the 1900 Accord and could not understand the bearing of this assurance by France on the vilayet of Tripoli, which lay to the north of the Tropic of Cancer and, hence, outside the scope of the Declaration;

Comment: Evidently the British Government had overlooked the western boundary of Tripoli adjoining France's possessions of Tunisia and Algeria.

- The Declaration insofar as it affected the "Hinterland of Tripoli", was entirely without prejudice to the rights of other powers;

- The southern boundary of Tripoli did not appear to have been very accurately defined - but all of it lay to the north of the point where the Article 3 southeast line commenced;

Comment: This is a reference to the notional frontier depicted on the Non-Annexed Map as the wavy, dashed line around "Tripolitania" (Map LC-M 27, paragraph 4.88, above).

- Great Britain was not prepared to state that it would remain, then and thereafter, disinterested in Tripoli for that would, inter alia, violate the spirit of treaty engagements with the Ottoman Empire, as Lord Salisbury had pointed out in 1899, when the same suggestion had been made by Italy;

- The formula of the 11 March Declaration as an alternative was authorized to be presented to the Italian Government.

4.105 One final point about Italy's 1902 Accord with Great Britain remains to be made. In the documents that were exchanged and that comprised the Accord, nowhere did Italy recognize, acknowledge, accept or approve anything. Great Britain's quid pro quo lay elsewhere: this assurance to Italy substantially lessened Italy's dependence on the Triple Alliance and the tensions it had caused and this was essentially what both Great Britain and France had sought in these 1900-1902 Accords.

(b) The 1902 Franco-Italian Accord

(i) Background

4.106 It was in the 1902 Accord between Italy and France that the Non-Annexed Map was first formally acknowledged by another Power; and for that reason, just as that map is pivotal to both Chad's first and second theories, so is the 1902 Accord. The CM claims that this Accord, which was preceded by the Canevaro speech in 1899 and the declarations "croisées" of Prinetti and Delcassé in 1901-1902, constituted the "recognition by Italy of the French zone of influence"[123]. The CM's Introduction states that by this Accord Italy's zone of influence over Tripolitania was also recognized by France. The second assertion has already been shown above to be wrong; it may have been Italy's aim, but Great Britain and France had flatly rejected such a proposition. So it is appropriate to turn to the first argument - Italy's alleged recognition of a French zone of influence.

---

[123] CM, p. 172, para. 108.

4.107 Lord Lansdowne's dispatch of 3 February 1902, just discussed, demonstrates that Great Britain considered at the time that no such French zone of influence had either been asserted by France or recognized by Great Britain in the 1899 Declaration (at least north of 15°N latitude). Since the claim to a French zone reposes on the intended meaning of the Declaration, it would appear difficult to argue that Italy recognized rights that are based on an instrument which did not give rise to such rights, at least in the view of the co-signatory, Great Britain.

4.108 Yet the CM makes just such an argument, starting off by saying that, in fact, the 1900 Accord was sufficient in itself to constitute such a recognition[124]. This is a strengthening of what the CM claimed for the 1900 Accord only a few pages back. However, the CM quite correctly brings out the fact that the main concern underlying the conclusion of the 1902 Accord was Italy's membership in the Triple Alliance, which was being renewed, and this confirms what was just said above concerning Great Britain's quid pro quo in its 1902 Accord with Italy.

4.109 In this regard, the CM refers to the 1912 explanatory memorandum of M. Barrère in which he set out in great detail the background, purpose and meaning of the 1902 Accord[125]. What is striking about Ambassador Barrère's 1912 report is that there is not a word in it about the Accord's effect as now alleged by Chad: that is (i) Italy's recognition of the French zone of influence; (ii) Italy's acceptance of the boundary of Tripolitania shown on the map referred to; (iii) Italy's acceptance of the southeast line; (iv) Italy's renunciation of Ottoman territorial claims. As Libya observed in its Memorial, it is inconceivable that M. Barrère, a person intimately connected with this Accord, would have failed to point out these effects in his report to Foreign Minister Poincaré, who had called for the report at a time when abrogation of the 1902 Accord was seriously under consideration by the French Government, if such effects were then believed by the French Government to result from the 1902 Accord.

---

[124] See, CM, p. 172, para. 109.

[125] The memorandum is discussed in and annexed to the LM, paras. 5.99-5.102 and French Archives Annex, p. 134.

(ii) Form and Text

4.110 Turning to the form and text of the 1902 Accord, the CM concedes that the 1900 Accord was not bilateral, in contrast to the 1902 Accord, which it claims confirmed the 1900 Accord and was a new recognition by Italy of the validity of the French sphere of influence established by the 1899 Declaration[126]. The CM then launches into one of its many flights of fancy. It asserts that the effect of the 1900 Accord was to "'légitimer' globalement la Déclaration de 1899"; and that the 1902 Accord, in turn, brought to the Declaration:

> "... une précision fondamentale concernant le tracé de 'la limite de l'expansion française en Afrique septentrionale' expression qui renvoie non au texte de la Déclaration de 1899 - qui, pour des Etats n'ayant pas participé à son élaboration, pouvait sembler ambigü ... - mais à la carte qui y est annexée dans tous les documents français officiels ...[127]."

Though this analysis of the text is totally wrong, it is skillfuly crafted to fit the first two theories of Chad's case.

4.111 The renvoi in the 1902 Accord referred to in this passage was to the Barrère letter of 14 December 1900, comprising the first part of the 1900 Accord, and to the explanation allegedly given to Signor Visconti-Venosta at that time. As already mentioned, the Barrère letter was not very clear; the British had had difficulty understanding it, as Lord Lansdowne's dispatch revealed, and Signor Prinetti wanted its meaning clarified. In his statement to the Italian Parliament on 14 December 1901, he had stated what it meant, and what he said at that time had been carefully worked out and approved by the French Government[128]. This was that the assurances given Italy in M. Barrère's letter concerned the limit of French expansion in the regions immediately to the east of France's possessions of Tunisia and Algeria, which adjoined the western frontier of the vilayet of Tripoli. Thus, the regions concerned extended no further south or east than Toummo. However, the boundaries of Tripolitania had never been defined. So Prinetti sought to clarify by the 1902 Accord where the Tripolitanian frontier was regarded to lie for purposes of knowing where France regarded its limit of expansion to be between its African possessions, Tunisia and Algeria, and the vilayet of Tripoli. There could have been no question of delimiting this boundary at the time, for Italy had no standing to make such an agreement: Tripolitania was a part of the Ottoman Empire. Of course, this was only a minor aspect of the 1902 Accord, the impetus behind which had been the imminent renewal of the Triple Alliance and Italy's renewal of its membership in it[129].

---

[126] CM, p. 175, paras. 116 and 117. Para. 117 is somewhat garbled, so this description of its meaning is the best that can be done in the circumstances.

[127] CM, p. 175, para. 118.

[128] See, para. 4.85, et seq., above.

4.112 The 1902 Accord was indeed a bilateral agreement: the letters exchanged were almost identical[130]. Its stated purpose was to "préciser les engagements" resulting from the letters exchanged in 1900[131]. It will be recalled that these undertakings concerned Italy's interest in Tripolitania-Cyrenaica and France's interest in Morocco. The 1900 Accord had not been even-handed, however: Italy's rights to develop its interests in Tripolitania arose only if France's position in Morocco was modified. Signor Prinetti sought in 1902 to correct this imbalance[132]. The opening paragraphs of each 1902 letter resolved this problem, leaving Italy free to develop its sphere of influence in Tripolitania-Cyrenaica and France free to do so in Morocco. The French sphere of influence recognized by Italy related to Morocco alone.

4.113 The travaux show that the sentence in which reference is made to a map was inserted at the request of Signor Prinetti. This reflects the fact that he wanted to establish for purposes of the limits of French expansion at least approximately where the Tripolitanian frontier lay on the side adjoining the French possessions (not the entire French "domaine", as M. Delcassé later described it)[133]. This concerned only the western frontier of Tripolitania as far as Toummo. That was the sole purpose of adding this reference to a map, which -

---

[129] See, LM para. 5.100.

[130] Their texts may be found in LM, International Accords and Agreements Annex, No. 7.

[131] The use of the word "engagements" rather than "accords" bears out the unilateral character of the 1900 exchange of letters.

[132] See, LM, para. 5.84.

[133] See, para. 4.89, above.

it is emphasized once more - was included at the request of Italy. The text of this sentence was this:

> "Il a été expliqué à cette occasion que, par la limite de l'expansion française en Afrique septentrionale visée dans la lettre précitée de Votre Excellence du 14 décembre 1900, on entend bien la frontière de la Tripolitaine indiquée par la carte annexée à la déclaration du 21 mars 1899, additionnelle à la Convention franco-anglaise du 14 juin 1898[134]."

4.114 This added sentence mentions the limit of French expansion referred to in M. Barrère's 1900 letter in describing the effect of the 1899 Declaration; and it says that this limit was set by the Tripolitanian boundary shown on the map referred to. As Signor Prinetti's speech had made clear, it was only the boundary between Tripolitania and the French possessions on its west that were of concern. The CM advances an argument - never put forward before by either France or Chad - that in the 1902 Accord Italy recognized the French zone of influence as extending to the wavy, dashed line shown on the map as the Tripolitanian boundary, but that France's agreement with Great Britain to limit French expansion to the Article 3 southeast line prevented France from taking full advantage of the 1902 Accord. In addition, the CM concludes that this alleged recognition by Italy of the French zone right up to the Tripolitanian boundary as shown on the map was a renunciation of any future reliance on the Ottoman claim to a Tripolitanian hinterland[135].

4.115 This argument is completely wrong for all sorts of reasons, among which are the following:

- The 1902 Accord makes a renvoi to M. Barrère's unilateral declaration of 14 December 1900 as to the limits of French territorial expansion imposed by the 1899 Declaration; it is a bilateral agreement as to the meaning of a unilateral statement whose unilateral character it did not alter;

- A map is referred to for the purpose of indicating the notional Tripolitanian frontier that supposedly was pointed out to Signor Visconti-Venosta in 1900, presumably on the basis of the same map;

---

[134] Emphasis added.

[135] See, CM, p. 176, para. 121.

- The reference to the French limit of expansion reverts back to M. Barrère's explanation in 1900 of the 1899 Declaration's meaning; there was no recognition by Italy of anything in the 1900 Accord, and this part of the 1902 Accord is restricted to a clarification of M. Barrère's explanation in 1900;

- Signor Prinetti's statement, approved word-for-word by the French Government, makes clear that the 1900 Accord only concerned Tripolitania's western boundary, which could not have concerned areas south or east of Toummo;

- The key sentence referring to a map was added to the 1902 Accord at Italy's request; it is hardly plausible that Italy added a provision that was intended to recognize a French zone of influence north of 15°N latitude when Italy had so clearly stated to Great Britain that if the Declaration affected such a region it would be deemed to disturb the status quo in the Mediterranean - and the British Government had assured the Italians that the Declaration did not have that effect;

- In any event, Italy had no standing to agree where the boundaries of Tripolitania were, for Tripolitania was under Ottoman sovereignty; nevertheless, Italy was a concerned bystander, anxious to maintain the status quo, and hence had sought this clarification in 1902 of M. Barrère's 1900 statement.

(iii) Reference to the Non-Annexed Map

4.116 The travaux of the 1902 Accord reveal that the first draft of the text of this sentence tabled by Signor Prinetti referred to a map attached to the 1898 Convention[136]. There had, in fact, been two maps referred to in that Convention and annexed to it[137]; but the reference obviously was wrong and was corrected. In doing so, it can only be presumed that M. Barrère inaccurately informed Signor Prinetti that a map had in fact been annexed to the 1899 Declaration[138]. Perhaps M. Barrère should not be criticized too harshly for this deception since the only line on the map of relevance to the Accord under negotiation was the notional Tripolitanian frontier - the wavy, dashed line - and this had not appeared before on any other map. Moreover, no Tripolitanian frontier had been referred to or in any way involved in the 1899 Declaration; it was a line gratuitously added by the French when they prepared the map for attachment to the Livre jaune text. So this may have been a practical means of illustrating what M. Barrère had meant in 1900 in his reference to the vilayet of Tripoli; and whether or not the map had actually been annexed to the Declaration might reasonably have been regarded as a matter of no importance for that reason.

4.117 An additional important point that emerges from the parts of the CM analysed above is that Chad concedes that the line referred to in the 1902 Accord was the line on the Non-Annexed Map depicting the notional Tripolitanian frontier[139].

4.118 After its completely flawed analysis of the text of the 1902 Accord, the CM turns to what Chad regards to be its significance. Briefly summarized, this is that in the 1902 Accord: (i) Italy accepted the 1899 "tracé" thus overcoming the limitations otherwise imposed by the principle res inter alios acta; (ii) Italy accepted the Tripolitanian boundary allegedly shown on the Non-Annexed Map; and (iii) Italy renounced the rights claimed by the Ottoman Empire[140]. Quite a tall order for the 1902 Accord to fill! M. Barrère would have been the first to be astonished!

---

[136] See, LM, para. 5.91.

[137] See, LM, para 5.16, and Map No. 39.

[138] It does not appear that a copy of the Non-Annexed Map referred to in the 1902 Accord was actually given Signor Prinetti before he signed the Accord, although he might have been shown the map; for he subsequently sent off to his Ambassador in Paris a request for a copy of the Livre jaune text with map attached. See, LM, para 5.93.

[139] See, CM, pp. 181-182, para. 147.

[140] See, CM, pp. 176-184, paras. 119-157.

4.119 It is here that one of the more inconsistent arguments in Chad's case makes an unobtrusive appearance. It has just been noted that the CM concedes that the line referred to on the map by Signor Prinetti was the wavy, dashed line depicting the notional Tripolitanian frontier. That line had no connection with the 1899 Declaration and was not referred to in it. Suddenly, the CM asserts that through the 1902 Accord Italy accepted the "tracé de 1899". This can only be a reference to the Article 3 southeast line.

4.120 The CM's line of reasoning is the following. The declarations of Admiral Canevaro and Signor Prinetti and ("de façon plus claire encore") the 1900 exchange of letters constituting that Accord had the effect of making opposable to Italy the "tracé" of the 1899 Declaration because (i) Italy had recognized the "partage" between Great Britain and France resulting from the 1899 Declaration; (ii) as a result, the contents of the 1899 Declaration became opposable to Italy; and (iii) since the Declaration fixed the "tracé des zones d'influence convenues, ce tracé est, du même coup, accepté par [Italy]"[141]. This sort of reasoning brings to mind a rock tumbling down a snow-covered mountain side, gathering snow around it as it descends, growing into a bigger and bigger snowball, until it comes to a stop at the bottom; and then the sun comes out and in a short time it is only a rock again. Chad's argument is built on a series of incorrect statements - as already demonstrated - which snowball into several extraordinary conclusions each of which is as invalid as its components.

4.121 In the 1902 Accords, a reference is made to the "Tripolitanian boundary" - a notional frontier as shown on the Non-Annexed Map -, not to the "tracé" of the 1899 Declaration. It was the 1902 Anglo-Italian Accord that took note of the 1899 "tracé", but in the negative sense that it was a limit to France's territorial expansion only and no recognition at all of any rights or interests north of 15°N latitude.

4.122 Now it will be noted that the conclusions set out in paragraph 4.120 above are all based on the 1899 Declaration, the Canevaro and Prinetti speeches and the 1900 Accord, all of which preceded the 1902 Franco-

---

[141] CM, p. 181, para. 144.

Italian Accord. So, by 1902, supposedly the die had been cast. However, the CM contends that the 1902 Accord added "deux précisions supplémentaires ..."[142]:

- The 1902 Accord referred not to the text of the 1899 Declaration but to the map annexed:

> "C'est donc le tracé de la limite entre les zones française et britannique figurant sur cette carte que l'Italie reconnaît ainsi implicitement sans qu'il soit utile de se préoccuper du texte de la Déclaration[143]";

Comment: By referring to the map, Chad argues, Italy implicitly recognized the Article 3 southeast line.

- But the 1902 Accord is not directed ("visé") at the Article 3 southeast line but at the wavy, dashed line on the map depicting the Tripolitanian boundary (at least up to the Tropic of Cancer and 16°E longitude, the starting point of the southeast line).

(iv) Italy's Alleged Recognition of a Tripolitanian Boundary

4.123 From these "précisions" emerge three conclusions[144]:

- First, Italy formally recognized Tripolitania's boundary, not just its zone of influence;

Comment: Italy had no standing at the time to recognize either a boundary or a zone of influence concerning Tripolitania, a part of the Ottoman Empire.

- Second, "du même coup", the line between Toummo and the Tropic of Cancer, as shown on the map, became formally recognized;

---

[142] CM, pp. 181-182, paras. 145-147.

[143] CM, p. 181, para. 146.

[144] CM, p. 182, para. 148.

Comment: The above comment applies here as well. It is here that the tampered-with version of the Non-Annexed Map appearing at page 162 of the CM plays a role. For as explained above starting at paragraph 4.53 (and illustrated on Map LC-M 25), this "extract" appearing in the CM shows the wavy, dashed line encircling "Tripolitania" as an international boundary, whereas the Non-Annexed Map, that is the Livre jaune map, of which it purports to be an "extract", did not. Thus, by referring to the map, Italy could not in 1902 have accepted the line shown on that map as the Tripolitanian boundary: no such boundary appeared on the Non-Annexed Map that Italy was shown, only a wavy, dashed line, not identified in the map's legend, which represented a general or notional idea of where Tripolitania's frontier was considered to lie.

- Third, Italy admitted that France's sphere of influence could extend up to the Tripolitanian boundary;

Comment: Italy admitted nothing; the parties only agreed to an interpretation of M. Barrère's 1900 letter. In any event, no part of the Tripolitanian frontier beyond Toummo was relevant to the 1900-1902 Accords.

Then the CM adds this plaintive note:

> "En réalité, la France se trouve empêchée, par son accord avec la Grande-Bretagne, de s'étendre au-delà de la ligne de 1899 - sauf si les deux parties en convenaient autrement - si bien que son expansion se trouve bornée au Nord-Ouest du Tchad par la frontière de la Tripolitaine définie par [the 1902 Accord] et au Nord-Est par la limite [agreed in the 1899 Declaration][145]."

4.124 All the flaws in this line of argument have been brought out above. Most conspicuous among them is that Italy had no standing to recognize any rights at all in the area, which were under or derived from Ottoman sovereignty. Furthermore, the 1900-1902 Accords, insofar as the limits of French expansion imposed by the 1899 Declaration were concerned, consisted of a unilateral French statement and its interpretation. There was no Italian recognition of anything at all involved. Italian recognition concerned France's position in Morocco. For these Accords, as to matters relevant to the present case, were concerned with the meaning and effect of the 1899 Declaration on Tripolitania. This is because Tripolitania had not been mentioned in the Declaration, and Italy sought to be assured that this omission did not imply that the status quo so far as Tripolitania was concerned had been altered.

---

[145] CM, p. 182, para. 149. At p. 195, para. 199, the CM refers to a map to illustrate this point, but apparently Chad has overlooked including this map in the CM.

4.125 By this line of argument, the CM attempts to lay the groundwork for the "interpretation" in the 1919 Anglo-French Convention of the 1899 line that had the effect of moving it northward by some 4° of latitude (from approximately 15°35'N to 19°30'N); and for Chad's contentions that Italy had no standing to protest this major shift in the direction of the line since in 1902 it had already agreed to allow France to extend its zone up to the Tripolitanian boundary shown on the map. As just demonstrated, Italy did no such thing; and the map portrayed no Tripolitanian boundary. Such a boundary is shown only on the "extract" of this map that Chad placed at page 162 of the CM - an utter distortion of the Non-Annexed Map referred to by Signor Prinetti in 1902.

(v) Italy's Alleged Renunciation of the Rights of the Ottoman Empire: the CM's Faulty Analysis of Ottoman Rights and Claims

4.126 So far, two effects attributed by Chad to the 1902 Accord have been examined and found to be incorrect - that Italy had formally recognized the Tripolitanian "boundary" (the first conclusion set out in paragraph 4.123 above); and that this alleged formal recognition included the line between Toummo and the Tropic of Cancer (the second conclusion). The third effect claimed is Italy's renunciation of the rights claimed by the Ottoman Empire. It is here that the CM examines the Ottoman protests, contrasting the reactions of Italy and the Ottoman Empire to what it calls the "partage des zones d'influence française et britannique [by the 1890 and 1899 accords]":

> "Contrairement à l'Italie, la Turquie, alors souveraine sur le Vilayet de Tripoli, avait vivement réagi au partage ...[146]"

This passage contains its own answer to the argument: the Ottomans were sovereign and protested vigorously; Italy had no legal standing to protest; and certainly Italy had no power to "waive" any claims or rights belonging to the Ottoman Empire. Certainly Italy went as far as it could in expressing concern and getting assurances from Great Britain (in the 1902 Anglo-Italian Accord) and from France (in the 1900-1902 Accords). That is what those Accords were all about! In 1912, when Italy inherited the Ottoman Empire's rights and titles in the area, it inherited as well the strong record of Ottoman protests. It is noted, once again, that the CM makes reference to a "partage" of zones of influence. The 1890 Declaration could fairly be said to have accomplished such a "partage"; but the 1899 Declaration north of 15°N latitude clearly was nothing of the kind, as Great Britain expressly pointed out to France, Italy and the Ottoman Empire a number of times[147].

---

[146] CM, p. 176, para. 122.

4.127 The British and French response to the Ottoman protests cannot accurately be described as a "rebuffade" as the CM maintains[148]. Both Great Britain and France initially reassured the Porte that no encroachments on the territorial rights of the Ottoman Empire were contemplated. Subsequently, the French virtually ignored the protests, without making any serious attempt at all to respond to the carefully reasoned notes and memoranda sent by the Porte in support of the Ottoman hinterland claim[149]. The British replies made the point that the 1899 Declaration did not affect any rights other Powers might have in the region (res inter alios acta); and of course the British view was that it had not even recognized a French zone up to the Article 3 southeast line, in view of the negative way in which that Article had been drafted.

4.128 Just as France had done, the CM brushes aside the Ottoman claim:

> "La doctrine de l'époque n'a pas davantage pris au sérieux les protestations de la Turquie[150]."

Only two sources, both French, are cited, one of whom, Rouard de Card, hardly qualifies as a neutral observer, for he had been instrumental in constructing for the French colonialists France's subsequently developed legal theories concerning Libya's southern boundary. His work cited by Chad never attempts in any serious way to examine the basis of the Ottoman claim[151]. This same imperious attitude is reflected in the following statement in the CM:

---

[147] See, paras. 4.11 and 4.103, above.

[148] CM, p. 177, para. 125.

[149] See, LM, paras. 5.77-5.79. The CM describes the French response in 1899 as "assez sèche". CM, p. 177, para. 126.

[150] CM, p. 177, para. 126.

[151] See, Rouard de Card, E.: La France et la Turquie dans le Sahara occidental, Paris, Pedone, 1910.

> "Par elles-mêmes, les prétentions de la Turquie à la souveraineté sur la région située au Sud-Ouest de la limite fixée par la Déclaration de 1899 à la zone d'influence française sont dénuées de tout fondement[152]."

Part IV of Libya's Memorial demonstrated otherwise in considerable detail.

4.129 Characteristic of France's attitude in the past and of Chad's attitude today as reflected in the CM, is the use of a double standard, under which the fact is ignored that the supposed faults pointed to in the claims and actions of the Ottomans - and later of the Italians and the Libyans - when applied to the claims and actions of France (and now of Chad) would often have had an even more serious effect. France had not even the semblance of a right to claim a zone of influence down to the Say-Barroua line in 1890, much of which lay south of Tripoli, not Algeria[153]. When, in 1899, French forces started to arrive at Lake Chad - hundreds of miles southwest of the Article 3 line - Ottoman influence (from Tripoli) and manifestations of allegiance to the Sultan (in Istanbul) had long before existed in the area. If neither claim to title was perfect, certainly the Ottoman claim had far more substance to it than that of France; and this was so before the Ottomans acquired effective control over the borderlands region starting in 1908. Moreover, the Ottoman claim set out in 1890 in notes to Great Britain and France included the areas now falling within the Libya-Chad borderlands, which France's zone of influence down to the Say-Barroua line did not. Thus, in this respect, the Ottoman claim was a prior claim.

4.130 In its brief glance at the basis of the Ottoman claim - in one short paragraph[154] - the CM quotes at random a few passages from one of the Porte's protests and dismisses them without any examination of the underlying facts and evidence or any consideration of what basis at all France had at the time for asserting a contrary title. For example, the Ottoman protest of 13 May 1899 (the full text of which is annexed to the CM as Annex 62) emphasized that the area in question was not terra nullius; yet the CM fails to deal with this critical point that goes to the heart of the French (and now Chad's) claim to title. The

---

[152] CM, p. 178, para. 127.

[153] See, LM, para. 5.09, et seq. As pointed out there and shown on Map No. 38, the extent of the 1890 Ottoman claim, described as preposterous by the French, was not much more than that of France's 1890 zone of influence.

[154] CM, p. 178, para. 128.

CM treats the 1899 Declaration as if it had settled the matter - but Great Britain did not share such a view; north of 15°N, the Declaration had not settled anything except to draw a line limiting France's territorial expansion toward the region of the Nile. Part IV of Libya's Memorial sets out facts and evidence that support the Ottoman claim and that demonstrate the absence of any basis for a French claim in 1899 or in 1902 or in 1912.

4.131 The major argument put forward in the CM against the Ottoman claim concerns the role played by the Senoussi in the Libya-Chad borderlands (and beyond) at the time. Quoting from a document also referred to in the LM and annexed thereto[155] - a dispatch dated 5 September 1899 from the French Consul General in Tripoli to Foreign Minister Delcassé -, the CM describes the situation around 1900 in the Libya-Chad borderlands to have been the following:

> "... [il] était soumis à l'autorité, directe ou indirecte, de la Senoussia qui, contrairement à la Sublime Porte, n'avait pas été 'admise au bénéfice du droit public de l'Europe'[156]."

As the LM demonstrates, the Senoussi were indeed in control of the region; and the Ottoman occupation of the region had not yet occurred[157].

4.132 This dispatch of 5 September 1899 from the French Consul General in Tripoli, M. Rais, deserves a few more words[158]. It had been prepared in order to comment on rumours that an Ottoman expedition was en route to Ouadaï. While doubting that such an expedition had been mounted, M. Rais observed:

> "... il n'en est pas moins certain que la Turquie est préoccupée de se ménager, par d'autres moyens, une influence plus ou moins

---

[155] See, LM, para. 4.69, et seq., and Exhibit 25 thereto.

[156] CM, pp. 178-179, para. 130.

[157] The Senoussi Order may not have been a sovereign State but it had many of the attributes of one and was regarded and treated by the European Powers almost as if it were a Sovereign Power.

[158] On p. 178, para. 129, the CM refers to another dispatch dated 15 June 1910, but it gives no reference to the document and does not annex it.

> effective dans la région que son Ambassadeur à Paris appelle l'"Hinterland de la Tripolitaine'[159]."

Pointing out the weaknesses of the Ottoman position in the Sudan[160] and the Porte's hesitations - and M. Rais was assessing the situation from the point of view of a French diplomat - the French Consul General warned that:

> "Même si la Turquie se reconnaît impuissante à établir son autorité dans le Soudan et à y faire respecter l'ordre, elle ne manquera pas d'exciter contre nous le fanatisme des musulmans et de nous créer des difficultés. L'accord qui paraît s'être établi récemment entre le Cheikh Senoussi et le Moutessarrif de Benghazi est un symptôme des tendances des autorités ottomanes."

4.133 The Sudan and, in particular, Ouadaï, the areas which M. Rais was writing about, lay south of the borderlands. The Ottomans had occupied areas to the north and east of the borderlands starting in 1862 (Map LC-M 13 referred to at paragraph 4.12 above), but they were not to start to occupy the borderlands until 1908. In the meantime, as M. Rais pointed out, control over the borderlands was in the hands of the Senoussi, and the Head of the Order had already by 1898 established his headquarters at Gouro, just east of Tibesti. The French, on the other hand, had only just arrived at Lake Chad and were considering what their next move might be.

4.134 The CM then turns to the Ottoman move into the borderlands, according it a certain recognition. Contending that by themselves the Ottoman claims were "dénuées de tout fondement", the CM concedes that:

> "... par son attitude ultérieure, la Turquie leur[161] a donné, à titre éphémère, une certaine consistance, dont sa défaite face à l'Italie les a à nouveau privées[162]."

As the evidence discussed in the LM shows, however, and as will be mentioned again below, the Ottoman occupation may have been somewhat short in duration (1908-1913) but it was by no means "éphémère"; and Ottoman effective control was recognized and respected at the time by the French authorities in the area and by the French Government in Paris. In comparison, the French incursion into the borderlands was shorter (in the northern part of the borderlands - 1913-1916) and was not an occupation at all but rather a ruthless military exercise to drive out the Senoussi and to provide a protective screen in the north for the part of the region in the south in which France was interested - what was later dubbed by the French "le Tchad utile", that is the region lying south of the borderlands, and generally south of 15°N latitude[163].

---

[159] LM, Exhibit 25, p. 1.

[160] See, LM, fn. 53, p. 47, for a definition of "the Sudan", an area lying south of the Sahara. The area south of the borderlands would be considered as part of "the Sudan".

[161] "Leur" refers to the Ottoman claims ("ses prétentions").

[162] CM, p. 178, para. 127.

4.135 The CM's discussion of the Porte's affirmation of Ottoman rights by the Ottoman occupation of the borderlands asserts that these rights were abandoned as a result of the Porte's defeat (in 1912) by Italy and its "renunciation" of them; and a result, the CM suggests it would be a waste of time to go into the subject more fully[164]. Of course, this misses the whole point of the effect of the 1912 Treaty of Ouchy, as immediately recognized by Great Britain and France. The Treaty of Ouchy left untouched the rights and titles of the Senoussi peoples over this territory. The territory did not suddenly become a vacuum - terra nullius - open to French occupation. Moreover, as successor to the Ottoman Empire, Italy inherited the Ottoman Empire's sovereign rights and titles over Tripolitania (and its hinterland), subsequently reaffirmed in Article 10 of the 1915 Treaty of London and in 1923 by the Treaty of Lausanne. These Ottoman rights, titles and claims were not "renounced" and they were not lost; they were passed on to Italy and given international recognition as having been inherited by Italy. Contrary to what the CM says, it is indeed necessary to consider the Ottoman claims and the Ottoman occupation - as the LM has done in some detail.

4.136 Without attempting to demonstrate with facts and evidence why it is so, the CM contends that the Ottoman influence exercised in the borderlands around 1900 was "fort ténue" and in any event far from being the exercise of territorial sovereignty[165]. But it is admitted in the CM that since the 1890 and 1899 Declarations were not opposable to the Ottoman Empire nothing barred the Ottomans from establishing such rights and titles, and indeed that they attempted to do so. However, the CM describes this attempt as an "échec"[166].

---

[163] This is another example of the application of a double standard.

[164] See, CM, pp. 178-179, paras. 127 and 130.

[165] CM, p. 179, para. 130.

4.137 The CM mentions a rapprochement between the Ottomans and the Senoussi, followed by the appearance of the Ottomans at Bardaï and Aïn Galakka. It describes this presence as "très limitée"; and yet at the same time describes it as involving "troupes très nombreuses et ... quelques fonctionnaires civils". What the CM apparently considers made this occupation limited is the rather strained and separate coexistence of the Turks and the Senoussi, particularly at Aïn Galakka.

4.138 No doubt relations between the Ottomans and the Senoussi were not close - and the Senoussi certainly had the upper hand in the sense that they controlled and led the peoples of the borderlands in their bitter fight to prevent the French invasion of their lands and the destruction of their civilization and economic life. But by 1908 the Senoussi and the peoples of the region welcomed the civil and military presence of the Ottomans in the borderlands in the common fight against the French. And this point deserves special emphasis: the Ottomans came in peacefully and were welcomed by the indigenous peoples and their leaders, the Senoussi; the French were bloodily opposed. The Ottoman presence had a special advantage: the French Government felt compelled to arrive at a modus vivendi and to halt the French military advance short of the borderlands occupied by the Ottomans and the Senoussi, side by side. An "arrangement passager" came about; and Paris issued strict instructions not to advance into the borderlands. A de facto line, roughly along 15°N latitude, was respected by both sides until 1913[167].

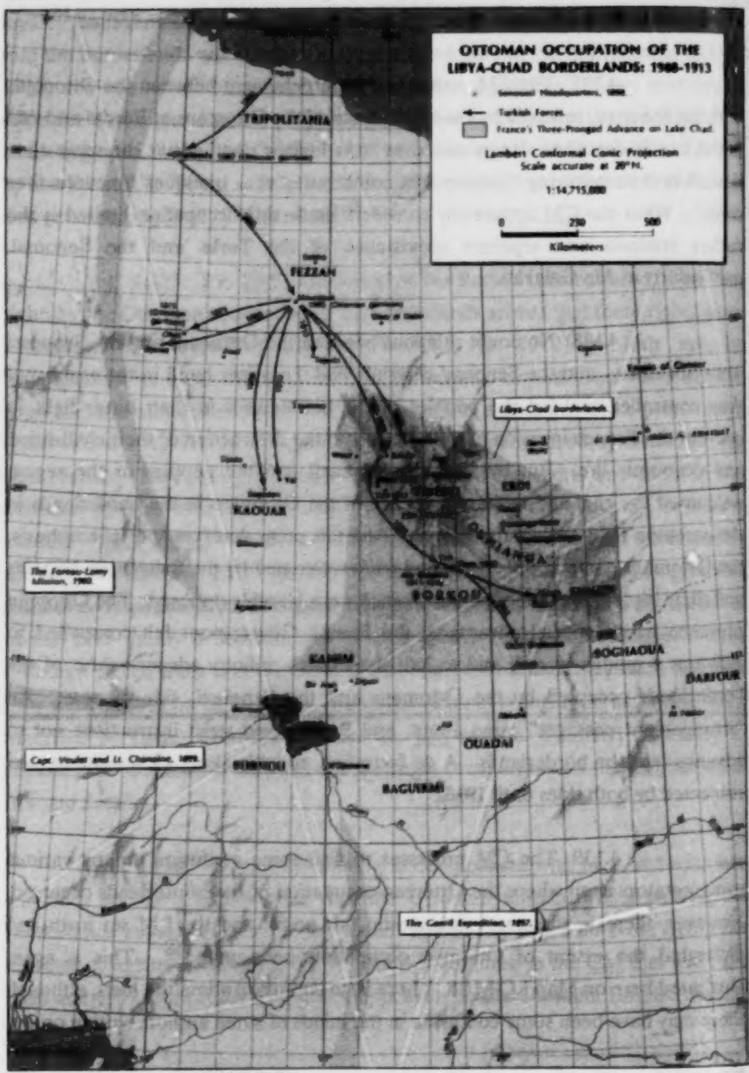
4.139 The CM professes to find some confusion among various commentators as to where the Ottoman occupation of the borderlands occurred. However, there is adequate evidence on this point; and the LM set forth and illustrated the extent of Ottoman occupation on a map[168]. This is again illustrated here on Map LC-M 28. There is no confusion about the facts, although there may have been some confusion in the minds of some authors writing on the

---

[166] CM, pp. 179-180, paras. 131-139.

[167] See, LM, paras. 4.108 and 4.142, et seq., for a full discussion of these events and the evidence to support it. See, also, para. 5.26, et seq., below.

[168] The map was Map No. 53, referred to at para. 5.116 of the LM.


OTTOMAN OCCUPATION OF THE LIBYA-CHAD BORDERLANDS: 1908-1913
Senussi Headquarters
Turkish Forces
France's Three-Pronged Advance on Lake Chad
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:14,715,000
0
250
500
Kilometers
TRIPOLITANIA
FEZZAN
Libya-Chad borderlands
ERDI
OUNIANGA
BORKOU
KAOUAR
KANEM
BOGHAOUA
DARFOUR
OUADAI
BAGUIRMI
The Foureau-Lamy Mission, 1900
Capt. Voulet and Lt. Chanoine, 1899
The Gentil Expedition, 1897

Specially prepared for presentation to the International Court of Justice

matter later who either had a bias or else did not conduct an adequate investigation into the matter. Part IV of the LM provides the facts and evidence to support the dates shown on this map. The Ottoman move began in 1906, in regions west of the borderlands; in 1908 they occupied Bardaï in Tibesti; and the Ottomans did not withdraw from the borderlands until 1913, after the Treaty of Ouchy. This occupation was of a longer duration and of a considerably more substantial and quite different character than the French incursions into the area starting in 1913 and ending in the northern borderlands by 1916 - a purely military foray, with no civil component at all, using largely camel-mounted Senegalese troops.

4.140 What is even more significant is that the effective occupation by the Ottomans was given recognition by France[169]. For in 1911 the Ottoman and French Governments had agreed to meet and negotiate the delimitation of Libya's boundaries. The vilayet of Tripoli had prepared a proposal to reduce appreciably the 1890 Ottoman claim to reflect the realities of the time[170]. The French Government's explicit instructions to the local French authorities headed by Colonel Largeau were to avoid any disturbance of the status quo, for the matter was to be resolved at the negotiating table. The Ottoman defeat at the hands of the Italians put a halt to these plans; and the rights, titles and claims of the Ottoman Empire were inherited by Italy.

4.141 One other matter remains to be cleared up, which concerns the Ottoman-Senoussi relationship. The Senoussi were in control of the borderlands when the Ottoman occupation began, as the CM admits; and the Senoussi remained in control after the Ottoman occupation had ended. As the LM illustrates, during the period 1902-1913 sovereign power was shared between the indigenous peoples led by the Senoussi and the Ottoman Empire[171]. The Ottoman assertion of sovereignty was not opposed by the Senoussi peoples; it was a bulwark in the fight against the French. At the end of 1912, the Ottoman rights and titles were passed on to Italy, but the Senoussi peoples' rights and titles remained untouched. At the time Libya was created an independent State as a

---

[169] The CM contends that the Ottoman occupation was "contestée vigoureusement par la France" citing a letter of Colonel Largeau (Annex 83). This was a formal protest reserving France's rights, but it was followed by an "arrangement passager", which if not a recognition of Ottoman title was an acknowledgment of effective Ottoman occupation.

[170] See, Map LC-M 42, referred to in para. 5.28, below.

[171] See, LM, paras. 5.116, et seq.

Senoussi monarchy, it inherited the titles of these peoples as well as the Ottoman rights and titles that had been passed to Libya by Italy.

(vi) The Invalidity of the Renunciation Argument

4.142 The final argument of Chad as to the significance of the 1902 Accord is that it constituted, along with the Canevaro speech in 1899 and the 1900 Accord, a renunciation by Italy of claimed Ottoman rights. It is put this way in the CM:

> "Par son attitude constante et par des déclarations expresses, ce pays [Italy] a en effet renoncé, en tout état de cause, à se poser en successeur des prétendus 'droits' de la Turquie[172]."

According to the CM, the 1900-1902 Accords had confirmed what Admiral Canevaro was claimed to have said - that Great Britain and France attached no importance to the Ottoman claims and that it was only natural that France should seek to extend its influence into the Tripolitanian hinterland. These Accords supposedly confirmed Admiral Canevaro's statement "en acceptant formellement le tracé résultant" from the 1899 Declaration. To this the CM adds a second proposition:

> "A aucun moment, elle [Italy] ne s'est posée en successeur des droits de la Turquie, que ce soit dans la période qui a suivi 1919 ... ou durant la négociation [of the 1935 Treaty][173]."

4.143 Both propositions are wrong - in fact they are so completely wrong that they bring out once more, with great clarity, that Chad's case is not directed at establishing the basis of France's claim to title over the borderlands but rather at trying to make out a case based on Italy's claimed renunciation, recognition, acknowledgment, and the like, none of which the CM comes close to establishing.

4.144 The first proposition - that the 1900-1902 Accords confirmed Italy's "distances à l'égard des revendications de la Turquie" as expressed in Admiral Canevaro's speech - even if it were so, which it is not - proves nothing. As observed earlier, what Admiral Canevaro had to say concerned the fact that the 1890 Ottoman claim projected far south of Lake Chad even into territory which subsequently Germany (Italy's ally) and Great Britain had carved up between them[174]. In any event, his speech was a dispassionate tour d'horizon without a trace of renunciation in it; at the time, Italy had no status to either claim or renounce territorial rights in the area.

---

[172] CM, p. 180, para. 140.

[173] CM, p. 181, para. 143.

4.145 What is intriguing, however, is that the significance of the 1900-1902 Accords has been discreetly pushed another notch forward: now the CM contends that the Accords confirmed the Italian position set out by Admiral Canevaro "en acceptant formellement le tracé résultant" from the 1899 Declaration. Aside from failing to explain how such a result follows, this assertion of a formal acceptance by Italy of the Article 3 southeast line had up to this point in the CM never been made; it is the final stage in the "snowball method" of argument employed by Chad[175].

4.146 As for the second proposition - that Italy never posed as successor to Turkey's rights - it is not only completely wrong, it is irrelevant. The Treaty of Ouchy established that Italy succeeded to the Ottoman Empire's rights and titles in the area, as Great Britain, France and other European Powers recognized on a number of occasions. Hence, Italy had no need to pose as a successor - it was the successor.

4.147 Examples of recognition by other Powers of Italy's inheritance, as well as is its own reliance on the Ottoman claims, include the following:

- British and French Declarations in 1912, recognizing Italian sovereignty, and the absence of any reservations by France or Great Britain as regards the 1912 Treaty of Ouchy;

- Article 10 of the 1915 Treaty of London, whose signatories included Russia, as well:

---

[174] See, para. 4.80, et seq., above. The Canevaro speech is appended hereto as Exhibit LC-M 11.

[175] See, para. 4.120, above.

> "All rights and privileges in Libya at present belonging to the Sultan by virtue of the Treaty of Lausanne are transferred to Italy[176]."

- The programs formulated by the Italian Colonial Ministry in 1916, the "maximum" program being modelled on the 1890 Ottoman claim, adjusted to take into account the supervening Anglo-German Agreement[177];

- Italy's 1926 maximum program, which very closely resembled the 1890 Ottoman claim (Map LC-M 1)[178];

- The 1927 article written by former Italian Foreign Minister Tittoni, reprinted in the BCAF[179];

- Lord Curzon's letter of 16 May 1922 to the French Ambassador in connection with the attempt of Great Britain and France to coordinate their replies to Italy's protest of the 1919 Anglo-French Convention[180];

- The British note verbale to the Italian Ambassador of 5 February 1923 asserting that any rights of sovereignty that Italy might have in the area "can only have been inherited from the Turkish Government"[181];

- The 1923 Treaty of Lausanne[182];

---

[176] LM, International Accords and Agreements Annex, No. 12.

[177] See, LM, para. 5.158 and Map No. 54 appearing there.

[178] Referred to at para. 1.07, above. This illustration appeared in the LM, as Map No. 69, referred to at para. 5.252.

[179] LM, Exhibit 43.

[180] See, LM, French Archives Annex, pp. 348-350.

[181] See, LM, paras. 5.212-5.213. See, also, LM, Italian Archives Annex, pp. 38-40.

[182] See, LM, para. 5.145. See, also, LM, International Accords and Agreements Annex, No. 20.

- The 1934 negotiations between Italy and Great Britain, leading to the 1934 Italo-Anglo-Egyptian Accord, during which Italy based its claim on its Ottoman inheritance[183].

4.148 The other European Powers formally recognized Italy as inheritor of the rights of the Ottoman Empire on a number of occasions. After the 1912 Treaty of Ouchy - to which France made no reservations - Italy had the right to assert claims to areas to which the Ottoman Empire had or claimed rights and titles prior to the Treaty; and it is of no consequence whether, or how often, it mentioned its Ottoman heritage.

4.149 The CM concludes that the 1902 Accord was "un instrument de référence fondamental" in view of the renvoi to it contained in Article 3 (Annex I) of the 1955 Treaty; but it adds that it was an "instrument autonome" as well, opposable to Libya as successor to Italy. The CM does not trouble to explain on what basis, under international law, Libya would succeed to the 1902 Accord - leaving aside for the moment the fact that it was not notified by France to Italy under the 1947 Peace Treaty and, hence, had been abrogated. Under the rules of State succession, even if the 1902 Accord had been "en vigueur" in 1951, Libya would not have succeeded to it unless it could be characterized as a boundary treaty or boundary régime[184]. Even accepting, arguendo, all the arguments of Chad concerning the effect of this Accord, it was political in character and did not establish a boundary or obligations and rights relating to the régime of a boundary[185]. The southeast line shown on the map concerned a limit to French expansion, not a boundary. The wavy, dashed line on the map, purporting to define the limits of Tripolitania, could not have been a boundary of Tripolitania, for it was part of the Ottoman Empire in 1902, and Italy and France could not have settled that boundary even had they attempted to do so; and there had been no agreement fixing this boundary up to that time, and, indeed, until 1919. The "extract" of the Non-Annexed Map appearing at page 162 of the CM, which indicates this wavy, dashed line to be a boundary, has modified the original map, which clearly did not show the line to be a boundary[186].

---

[183] See, LM, para. 5.284, et seq.

[184] See, the exception set out in Article 11 of the 1978 Vienna Convention. U.N. Doc. A/CONF.80/31, adopted 23 August 1978; reprinted in Am. J. Int. L., Vol. 72, 1978, p. 971.

[185] It is admitted in the CM that the 1900 Accord was not a boundary delimitation treaty. See, fn. 109, above. The 1902 Accord was, with respect to the effect of the 1899 Declaration on Tripolitania-Cyrenaica, only a clarification of the 1900 Accord.

CHAPTER V. THE 1912 FRANCO-ITALIAN AGREEMENT

4.150 The CM points out that the 1902 Accord was confirmed by Italy on 28 October 1912 in the Agreement entered into with France on that day. This is correct; the Agreement, which refers specifically to the 1902 Accord, confirmed the mutual intent of the two Powers not to place any obstacles in the way of the realization of all measures judged opportune by each concerning Morocco (as to France) and Libya (as to Italy). This Agreement was entered into 10 days after the Treaty of Ouchy; at that point, Italy was dealing with Libya as subject to its sovereignty[187]. Given the importance of this Agreement to Chad's legal theory of the case, it is another striking omission from the Annex I list.

4.151 The CM does not bother to examine the background of the 1912 Agreement, as the LM does[188]. This evidence destroys Chad's theory as to the meaning and effect of the 1902 Accord.

4.152 In 1912, while the war between Italy and the Ottoman Empire was still going on, France and Italy had a falling out; and the French Government seriously considered repudiating the 1902 Accord. It will be recalled that the important provisions of the Accord, which reflected France's concern that Italy was renewing its membership in the Triple Alliance, related to matters of neutrality in the event of attack as well as the recognition of each State's rights to develop its influence in Morocco and Libya, respectively. It was in the light of these developments that Ambassador Barrère had been asked by Foreign Minister Poincaré to prepare a report on the 1902 Accord, which has been referred to earlier[189] - a comprehensive report in which there was not one word about the supposed effects of the Accord upon which Chad's case now so heavily relies.

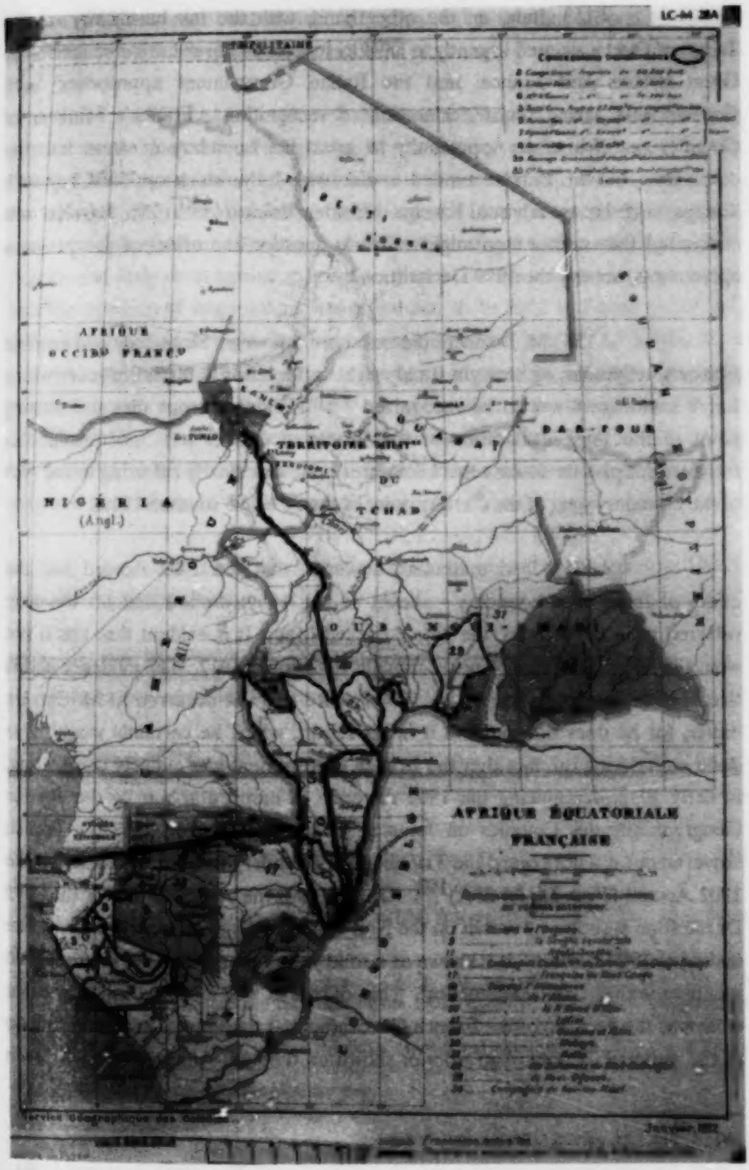
---

[186] See, para. 4.53, et seq., above.

[187] Italy proclaimed its "full and entire sovereignty" over Tripolitania and Cyrenaica by Royal Decree of 5 November 1911. See, LM, para. 5.128.

[188] See, LM, paras. 5.117-5.121.

[189] See, para. 4.109, above.


LC-84 28A
TRIPOLITAINE
AFRIQUE
OCCIDle FRANÇse
NIGÉRIA
(Angl.)
TERRITOIRE MILITre
DU
TCHAD
DAR-FOUR
SOUDAN
AFRIQUE ÉQUATORIALE
FRANÇAISE
Service Géographique des Colonies
Janvier 1912

4.153 Italy, on the other hand, with the ink barely dry on the Treaty of Ouchy, wanted urgently to have its sovereignty over Libya recognized by Great Britain and France, and the Italian Government approached both Governments asking for a declaration of recognition. France's Minister of Colonies saw this as an opportunity to inject the boundary question into the discussions, but M. Barrère tended to side with Italy, which opposed any such linkage; and he so advised Foreign Minister Poincaré[190]. M. Barrère was concerned that such a step might call into question the effect of the previous agreements, notably the 1899 Declaration.

4.154 M. Poincaré did not share this view. Since Italy had become France's neighbour, he thought it only right to "préciser le territoire" over which Italy's sovereignty was to be recognized[191]. He pointed out that the starting point of the 1899 Declaration at the Tropic of Cancer left "indéterminée la frontière sur plus de douze cents kilomètres". He was clearly referring to the part of the boundary west of the starting point of the Article 3 southeast line.

4.155 Chad maintains, however, that the 1902 Accord had the effect of fixing that boundary - shown as the wavy, dashed line on the map referred to in the Accord, the Non-Annexed Map. It is evident that this is not what the French Foreign Minister thought in October 1912. The evidence shows that such an interpretation of the 1902 Accord had not occurred to M. Barrère either, for he does not mention it in his report, which he certainly would have done considering the fact that the French Government was actively considering, in early 1912, denouncing the 1902 Accord. A map published by the Service Géographique des Colonies on January 1912 reveals that in 1912 the French Government did not regard the Tripolitanian boundary to have been fixed in the 1902 Accord (Map LC-M 28A)[192]. On this map the Article 3 line of the 1899 Declaration is shown as drawn on the Non-Annexed Map - an east-southeast line ending at 19°N latitude. It is shown as a solid yellow line, which the map's legend identifies with "frontières actuelles". This, of course, was incorrect but it revealed what was the position of the French Government at the time. The southern loop of the notional Tripolitanian frontier shown on the Non-Annexed Map is drawn on this 1912 map as a dashed line, indicating that it was not a boundary in the opinion of the French Government in 1912.

---

[190] See, LM, para. 5.117.

[191] Ibid.

[192] A larger photocopy of this map has been filed with the Registry.

4.156 As it developed, the idea of linkage was dropped; Italy was given a simple declaration recognizing its sovereignty; and the Agreement of 28 October 1912 was entered into, which included not only a provision confirming the interests of France and Italy in Morocco and Libya, respectively, but also a reciprocal "most-favoured nation" clause concerning Morocco and Libya[193]. France and Italy then agreed to meet to discuss the boundary question; and in fact the opening of negotiations was scheduled to be held in Berne on 20 July 1914, but was cancelled due to the outbreak of World War I[194]. It should be pointed out that the unsupported statement in the CM that the boundary negotiations were undertaken "suite à une proposition italienne de juin 1913" is not correct[195]. They were the result of the business left unfinished in 1912, which M. Poincaré wanted to get on with. Chad's own evidence reveals that Italy's proposal in 1913 was to "hâter" these negotiations[196].

4.157 The CM reaches precisely the wrong conclusion from what it calls these travaux, claiming that:

> "... ces travaux préparatoires établissent l'adhésion continue de l'Italie à l'accord de 1902 et au tracé de la frontière résultant de la carte annexée à la Déclaration de 1899[197]."

The background of the 1912 Agreement reveals that M. Poincaré and M. Barrère had no such view concerning the wavy, dashed line indicating the notional limits of Tripolitania on the Non-Annexed Map, a line, it will be noted again, that on that map does not purport to be a boundary. In his 1914 report (which the CM quotes a part of), M. Marin only - and wrongly - talked of Italy's recognition of the limits of the French and Italian zones of influence, not a boundary line[198].

---

[193] The text of the Agreement appears in LM, International Accords and Agreements Annex, No. 11.

[194] See, LM, para. 5.120, et seq.; see, also, CM, p. 183, para. 152. It was in 1914 that the French thesis concerning the effect of the 1902 Accord with respect to Tripolitania's "boundary", now espoused by Chad, was first publicly voiced in a report by M. Louis Marin to the French Parliament. What he said was not consistent with the concerns expressed by Foreign Minister Poincaré two years earlier, as mentioned above, or with the 1912 French Colonial Ministry map.

[195] CM, pp. 182-183, para. 152.

[196] CM, Annex 336.

[197] CM, p. 183, para. 153.

4.158 The CM mentions another event - Foreign Minister Tittoni's speech to the Italian Parliament on 27 September 1919 - as additional evidence of Italy's confirmation or acceptance of the alleged boundary shown on the Non-Annexed Map. This speech followed the execution of the 1919 Anglo-French Convention, a review of which follows next. Accordingly, the speech will be considered in that context.

4.159 The CM underscores the importance of the 1912 Agreement in its final conclusions concerning the 1902 Accord, saying that it:

> "... manifeste la reconnaissance par l'Italie du tracé, non seulement de la limite de la zone d'influence française, mais aussi de la frontière méridionale de la Tripolitaine dont elle est devenue le souverain territorial en 1912 ...[199]"

Such an assertion would have come as a surprise to Messrs. Barrère and Poincaré, and even to M. Marin (who only mentioned - wrongly at that - zones of influence). There was no miraculous conversion in 1912 of the wavy, dashed line shown on the Non-Annexed Map into an agreed boundary for Tripolitania, which is what the CM claims, when the map itself indicated no such thing. For reasons having nothing to do with boundaries, the 1912 Agreement may have reaffirmed the 1902 Accord; but it is going to truly extraordinary lengths to try to make out of that instrument an agreement binding on Italy concerning a Tripolitanian "boundary" that is not even shown on the map referred to in the Accord. Chad's theory is flatly repudiated by Map LC-M 28A, issued in 1912 by the French Colonial Ministry. In any event, as fully discussed above, the 1902 Accord involved no recognition by Italy of any line, except as an interpretation of M. Barrère's letter in 1900, which in turn was only a unilateral French statement as to the intent of the 1899 Declaration.

---

[198] See, CM, p. 183, para. 152. M. Marin committed another mistake in asserting that the "carte annexée", that is the Non-Annexed Map, reflected the Italian zone of influence. Italy had no standing at all in the region in 1902: Tripolitania was under Ottoman sovereignty. In addition, the Marin Report was not "travaux préparatoires". "Préparatoires" to what? It was a report to justify appropriating funds for the boundary commission's work, which in the event was never undertaken.

[199] CM, p. 184, para. 156. This 1912 Agreement serves the useful purpose in Chad's theories of providing a rationale for that portion of Libya's boundary between Toummo and the Tropic of Cancer, which otherwise did not emerge from Chad's theories. The rationale fails, however, since it depends on the faulty supposition that the Non-Annexed Map referred to in the 1902 Accord indicated a boundary for Tripolitania, which it did not. This is clearly shown on Map LC-M 28A.

4.160 All that emerges from the "snowball" effect of these arguments as set out in the CM is what was the starting point in 1900: a unilateral French declaration that the 1899 Declaration meant that France had no ambitions to the east of its then African possessions of Tunisia and Algeria beyond a wavy, dashed line referred to on a map, which served the practical purpose of illustrating the line, but which had not been annexed to the 1899 Declaration, and the wavy line of which was not an agreed boundary and was not indicated on the map as being a boundary.

CHAPTER VI. THE 1919 ANGLO-FRENCH CONVENTION (8 SEPTEMBER)

4.161 This agreement, the first of two entered into by France in 1919 - on 8 September, with Great Britain; and 4 days later, on 12 September, with Italy, both having been signed on behalf of France by Foreign Minister Pichon - must be considered in context. Its background is particularly relevant, for the strange paragraph inserted at the end of the agreement is largely unexplained in any travaux Libya has been able to turn up; and the CM indicates that Chad has experienced the same difficulty. However, the CM asserts that the text is clear:

> "... il s'agit bien sur ce point de confirmer, et non de modifier, la Déclaration du 21 mars 1899[200]."

And the CM adds that the line ("ce tracé") resulting from the 1919 Convention -

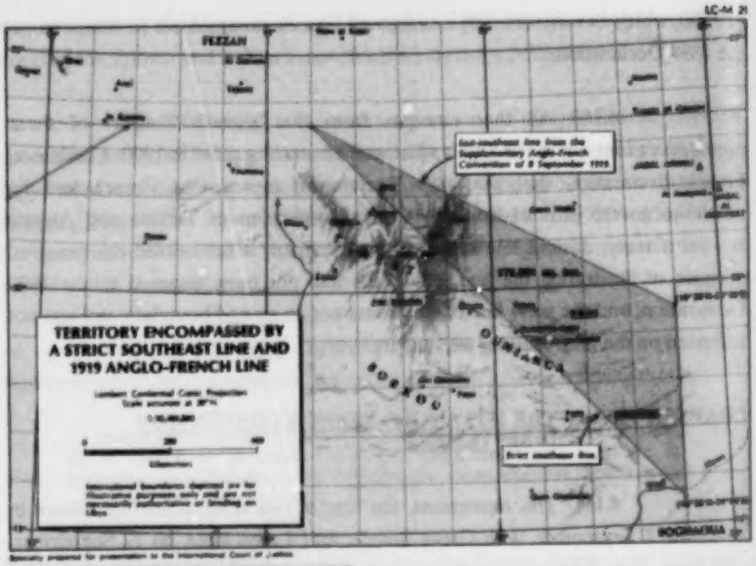
> "... est identique à celui retenu par la France et la Grande-Bretagne en 1899 et accepté par l'Italie en 1902[201]."

4.162 These, then, are the first two propositions about the 1919 Convention that Chad has the duty to prove: (i) that it confirmed but did not modify the 1899 southeast line of Article 3; and (ii) that the 1919 line was identical to the 1899 line. To this, the CM advances a third proposition, one that

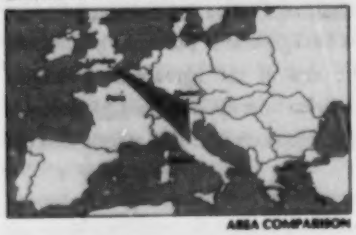
---

[200] CM, p. 185, para. 163. It is also described as "dépourvu d'ambiguïté".

[201] CM, p. 184, para. 159.

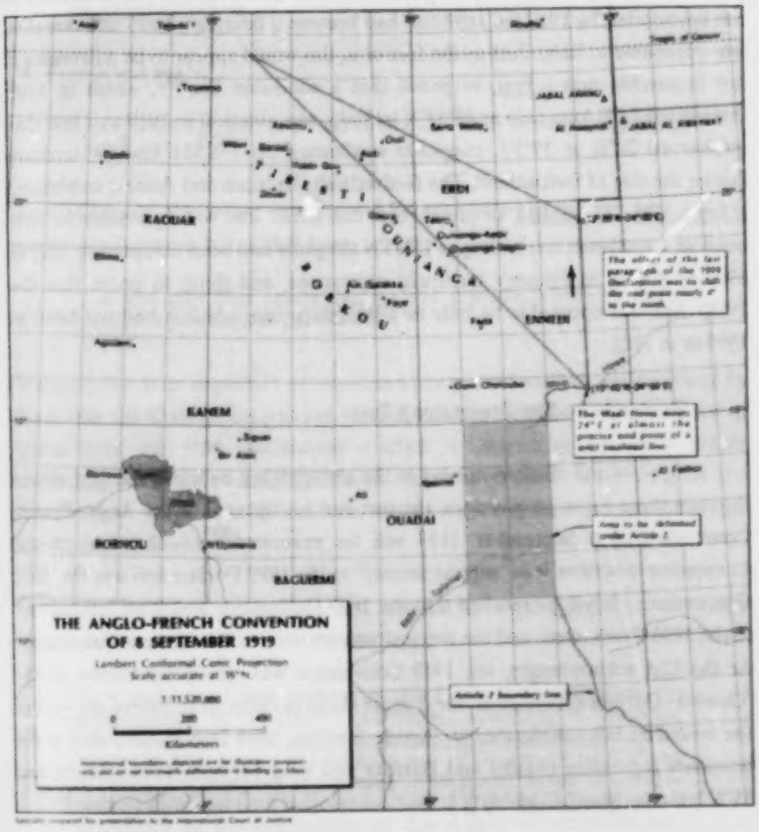

LC-44 21
FEZZAN
TERRITORY ENCOMPASSED BY A STRICT SOUTHEAST LINE AND 1919 ANGLO-FRENCH LINE
Lambert Conformal Conic Projection
0
200
400
Kilometers
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
Strict southeast line
OUNIANGA
BORKOU

Specially prepared for presentation to the International Court of Justice



AREA COMPARISON

LC-M 28


Tropic of Cancer
JABAL ARKNU
JABAL AL UWAYNAT
Sarra Wells
TIBESTI
ERDI
KAOUAR
Bilma
OUNIANGA
BORKOU
Ain Galakka
Faya
ENNEDI
Agadem
Oum Chalouba
KANEM
OUADAI
BORNOU
BAGUIRMI
El Fasher
The effect of the last paragraph of the 1899 Declaration was to shift the end point nearly 4° to the north
The Wadi Howa meets 24°E at almost the precise end point of a strict southeast line
Area to be delimited under Article 2
Article 2 Boundary line
THE ANGLO-FRENCH CONVENTION OF 8 SEPTEMBER 1919
Lambert Conformal Conic Projection
Scale accurate at 18°N
1:11,520,000
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya

Specially prepared for presentation to the International Court of Justice

Chad also must prove: even though the 1899 line concerned zones of influence, not boundaries, by 1919 the 1899 line had become a boundary line - and one that was opposable to Italy. Just on the face of it, this would appear to be a daunting if not impossible task - first, to prove that a southeast line[202], which in 1899 intersected 24°E longitude at 15°35'N latitude, was identical in 1919 to a line that intersected 24°E at 19°30', magically swallowing up 178,651 km^2 of territory (about the size of Switzerland, The Netherlands, Belgium and Austria combined) (Map L-CM 21); second, to prove that this 19°30' line was opposable to Italy because a southeast line ending at 15°35'N allegedly had been accepted by Italy in 1902 as a limit to France's territorial aspirations; and third, to prove that the 19°30' line was opposable to Italy as a boundary line, which it had not been in 1899 or in 1902.

SECTION 1. The Convention's Text

4.163 Before turning to the abracadabra by which the CM claims to prove these three propositions, the text and background of the Anglo-French Convention of 8 September 1919 will be examined[203]. The title of the Convention describes it as "supplementary" to the 1899 Declaration and the 1898 Convention. (It will be recalled that the 1899 Declaration was itself "additional" to the 1898 Convention, and the two instruments were ratified as one agreement.) As the CM acknowledges, the 1919 Convention was commonly known as the "Ouadaï - Darfour Convention" for it came about in order to complete the part of the boundary left undelimited by Article 2 of the 1899 Declaration, that is the boundary separating Ouadaï and Darfour and lying between 11°N latitude and 15°N latitude (Map LC-M 29)[204].

4.164 The opening paragraph of the 1919 Convention, in its English text, provides as follows:

---

[202] A strict southeast line because, as demonstrated earlier, the Article 3 line of the 1899 Declaration was intended to be a southeast, not an east-southeast line. See, para. 4.18, et seq., above.

[203] The full text may be found at LM, International Accords and Agreements Annex, No. 17.

[204] See, LM, para. 5.174, et seq. It is of interest that the Exposé des motifs accompanying the draft law presented to the French Parliament to authorize ratification of the 1919 Convention does not mention the final "interpretative" paragraph at all; it only describes the Convention's effect in delimiting the Ouadaï-Darfour boundary. This may be one reason why Italy did not get wind of it until 1921.

> "Articles 2 and 3 of the Declaration of 21st March, 1899, are *amplified* as follows ... ."

The French text reads:

> "Les articles 2 et 3 de la Déclaration du 21 mars 1899 sont *modifiés* comme suit ...[205]."

The *CM* ignores this rather important difference between the two texts, saying that the English term "amplified" was -

> "... à vrai dire plus exacte car il s'agit plus de préciser que de modifier à proprement parler ...[206]."

Of course, this is an important proposition to be proved and not merely stated by Chad: that the Convention was not intended to modify either the provisions of Article 2 of the 1899 Declaration - which it undeniably did, as a simple comparison of the texts reveals - or the provisions of Article 3, concerning the line of separation north of 15°N latitude, which only the final paragraph of the Convention dealt with.

4.165 The English text of the last paragraph of the 1919 Convention is as follows:

> "It is understood that nothing in this Convention *prejudices the interpretation* of the [1899 Declaration], according to which the words in Article 3 '... *shall run thence to the south-east* until it meets the 24th degree of longitude east of Greenwich (21°40' east of Paris)' are accepted as meaning '... shall run thence in a south-easterly direction until it meets the 24th degree of longitude east of Greenwich at the intersection of that degree of longitude with parallel 19°30' of latitude'[207]."

The French text for the words underlined above reads: "ne modifiera en rien l'interprétation" and "elle prendra une direction sud-est ...". It is clear that this final paragraph was the only part of the Convention that "amplified" or "modified" Article 3 of the 1899 Declaration; all that precedes it concerned the Article 2 *boundary delimitation*. In fact, the last paragraph seems to have been tacked on to the end of a treaty intended to deal only with the Ouadaï-Darfour delimitation. Exactly how or why this came about remains a mystery; and following signature, the Convention remained unknown to Italy until the French law promulgating the Convention was published on 14 April 1921. The Italian Government promptly made enquiries in London and Paris to find out what had occurred behind its back[208].

---

[205] Emphasis added.

[206] *CM*, pp. 185-186, para. 164.

[207] *LM*, *International Accords and Agreements Annex*, No. 17. Emphasis added.

4.166 Before turning to that story, a further analysis of the Convention's text is in order, with two questions in mind: (i) was the last paragraph a modification of Article 3 of the 1899 Declaration in terms of the direction of the line; (ii) did that paragraph transform the nature of the line into a boundary?

4.167 In spite of having sided with the English text of the opening paragraph of the Convention, which used the word "amplified" rather than "modified", the CM goes on to concede that the intention of the opening paragraph was "clairement modificative", with respect to Article 2 of the Declaration, in contrast to the final paragraph ("l'interprétation donnée à la Déclaration n'est en rien modifiée"), which only concerned Article 3 of the Declaration. Such an argument is unjustified: the opening paragraph referred to Articles 2 and 3 of the 1899 Declaration. So it was contemplated by the Convention that Articles 2 and 3 of the Declaration might be modified or amplified, and the last paragraph of the Convention, therefore, could be a modification or amplification.

4.168 The last paragraph of the Convention needs to be looked at closely. It concerned an "interpretation" of Article 3 of the 1899 Declaration. It did not say that the "interpretation" set out in the paragraph did not modify Article 3; rather it said that nothing in the Convention modified that interpretation ("la présente Convention ne modifiera en rien l'interprétation donnée à la Déclaration"). It has already been demonstrated that, immediately following ratification of the 1899 Declaration, France had published a map, described then by Foreign Minister Delcassé to Ambassador Cambon as "indicative", on which the southeast line of Article 3 was shown as an east/southeast line; and this shift in the direction of the line was immediately perceived by the British[209]. The final paragraph of the 1919 Convention had the effect of accepting such an interpretation given to the Declaration - an interpretation that had already substantially modified the direction of the Article 3 southeast line - but moving it a notch north of the line shown on the Non-Annexed Map: from 19°N to 19°30'N, a shift that involved some 22,828 km^2 of territory (the size of half of Switzerland or half of Denmark; see, Map LC-M 20 referred to in paragraph 4.72 above). This difference between the direction of these lines will be dealt with more fully further on.

---

[208] In the light of Article 13 of the 1915 Treaty of London, Italy had every reason to expect to be fully consulted on any treaty that related to areas whose boundaries were of interest to Italy.

4.169 The language of the final paragraph of the 1919 Convention demonstrates on its face that it modified the text of Article 3 as to the direction of the Article 3 line. In Article 3, the line was described in the following way: "shall run thence to the south-east"; "descendra dans la direction du sud-est". The final paragraph of the 1919 Convention "interprets" Article 3 so as to read "shall run thence in a south-easterly direction"; "prendra une direction sud-est". The English phrase "to the south-east" is quite different from the phrase "in a south-easterly direction"; and "descendra dans la direction" is not the same as "prendra une direction". A geographer would immediately know how to draw a line descending "to the south-east"; he would need guidance as to how to draw the line "in a south-easterly direction". Had a modification not been involved, there would have been no reason to alter the text of Article 3; the end point of the line at 19°30'N could simply have been added as a "précision", as the CM claims the paragraph was intended to be.

4.170 Thus, the 1919 Convention contemplated modifications (or "amplifications", which came down to the same thing) in both Articles 2 and 3 of the 1899 Declaration, and its final paragraph not only expressly modified the text of Article 3 but did not, contrary to what the CM argues[210], provide that the "interpretation" that it described was not a modification of the 1899 Declaration; what it said was that nothing in the 1919 Convention prejudiced such an interpretation - which means something quite different.

4.171 The text of the other paragraphs of the 1919 Convention, relating to Article 2 of the 1899 Declaration, contained elements relevant to this discussion, as well. They delimited the Ouadaï-Darfour boundary between 11°N and 15°N, a sector that the Declaration had left to be dealt with in the future. A comparison of the text of the fourth and fifth paragraphs of the Convention with the text of Article 2 of the 1899 Declaration reveals substantial amendments. The remainder of the paragraphs concerning the Article 2 sector spelled out in detail the delimitation in accordance with the principle of dividing the area according to where certain tribes lived. This was a new principle not set out in the 1899 Declaration. These paragraphs of the Convention made it clear that they concerned a boundary delimitation - the word "boundary" was used repeatedly in these paragraphs. Thus, the Convention accomplished a major amendment to Article 2 of the Declaration, modifying its text and establishing certain new principles to govern the demarcation to follow; and it explicitly concerned a boundary line, as had the 1899 Declaration in respect to the Article 2 sector.

---

[209] See, para. 4.50, et seq., above.

[210] See, CM, p. 186, para. 164.

4.172 When the line delimited under these paragraphs of the Convention (which as it approached 15°N from the south followed approximately a north/south direction) reached the Wadi Howa (at approximately 15°45'N), the boundary was to continue on in the following way:

> "After joining the Wadi Howa the boundary shall follow that Wadi in principle eastwards as far as the eastern limit of the French sphere, namely, the 24th degree of longitude east of Greenwich, so as to separate in principle the territories of the Bedayat and Guraan tribes to the north from those of the Zaghawa to the south[211]."

As shown on Map LC-M 29 referred to in paragraph 4.163 above, this point of intersection of Wadi Howa and 24°E longitude described in the quoted passage would be almost precisely the end point of a true southeast line under Article 3 - the line intended by Great Britain and France in 1899. Without the last paragraph of the Convention, this would have been the end point of the boundary of the Article 2 sector of the Declaration as modified by the Convention. The effect of the last paragraph of the 1919 Convention was to shift the end point of the Article 2 sector some 4° to the north (to 19°30'N) and, thus, substantially to modify the Article 3 line's direction.

4.173 There is one other paragraph of the Convention relating to Article 2 that is of interest here. In pertinent part, it states that Great Britain recognized that -

---

[211] LM, International Accords and Agreements Annex, No. 17.

> "... in order to exercise an effective control over the Bedayet and Guraan tribes, it might be necessary for [France] to extend its sphere of control eastwards beyond the 24th degree of longitude ... ."

And the paragraph continued that Great Britain had no objection to such an extension provided it did not go beyond the limits of the country actually inhabited by these tribes or prejudice the absolute British rights to certain named oases; and provided further that it did not exceed 24°30'E. This brings out the main preoccupation of the British in 1919 concerning the region in question - the control of unruly tribes; and it is reasonable to conclude that this was why Great Britain had no difficulty in agreeing to the change brought about by the last paragraphs of the Convention, for it left most of this headache to the French. The same paragraph refers to the Boundary Commission named in Article 4 of the 1899 Declaration. It will be recalled that Article 4 limited the task of the Commission to the demarcation of the Article 2, not the Article 3, sector of the boundary. The final paragraph of the Convention follows the paragraph just referred to above; but it relates only to the Article 3 sector, north of 15°N latitude, an area not embraced within the mandate of the Commission under Article 4 of the 1899 Declaration.

SECTION 2. Maps

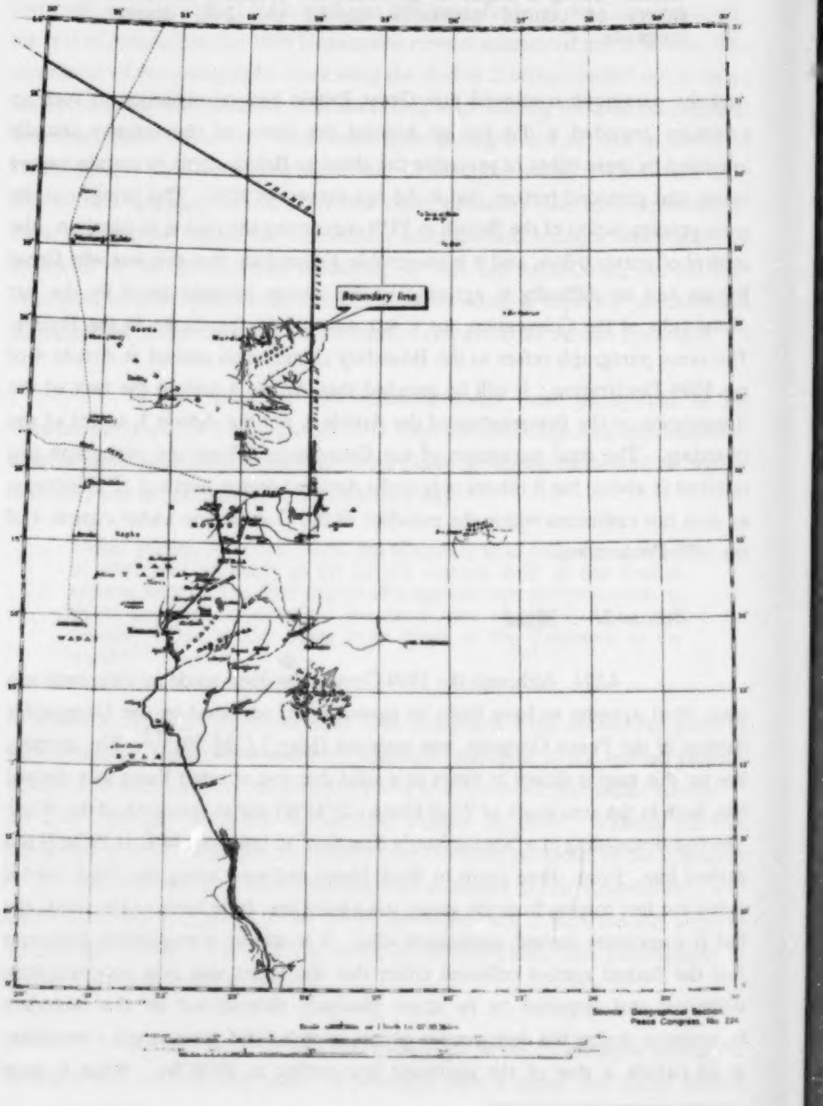
4.174 Although the 1919 Convention itself made no reference to a map, what appears to have been an agreed map, prepared by the Geographic Section of the Peace Congress, was annexed (Map LC-M 30)[212]. The dividing line on this map is shown at times as a solid line and at other times as a dashed line, both in the area south of Wadi Howa (15°45'N) and to the north of the Wadi. The line descending in a "southeasterly direction" to intersect 24°E at 19°30'N is a dashed line. From there south to Wadi Howa and west along the Wadi until it meets the line coming from the south, it is a solid line; from there to the south, the line is sometimes dashed, sometimes solid. It would be a reasonable inference that the dashed symbol reflected either that the sector was only approximately delimited and required to be more precisely determined by the boundary commission during the demarcation phase, or that it did not concern a boundary at all (which is true of the southeast line ending at 19°30'N). What is most

---

[212] This same map was included in the LM as Map No. 60, and is referred to there at para. 5.176, et seq.

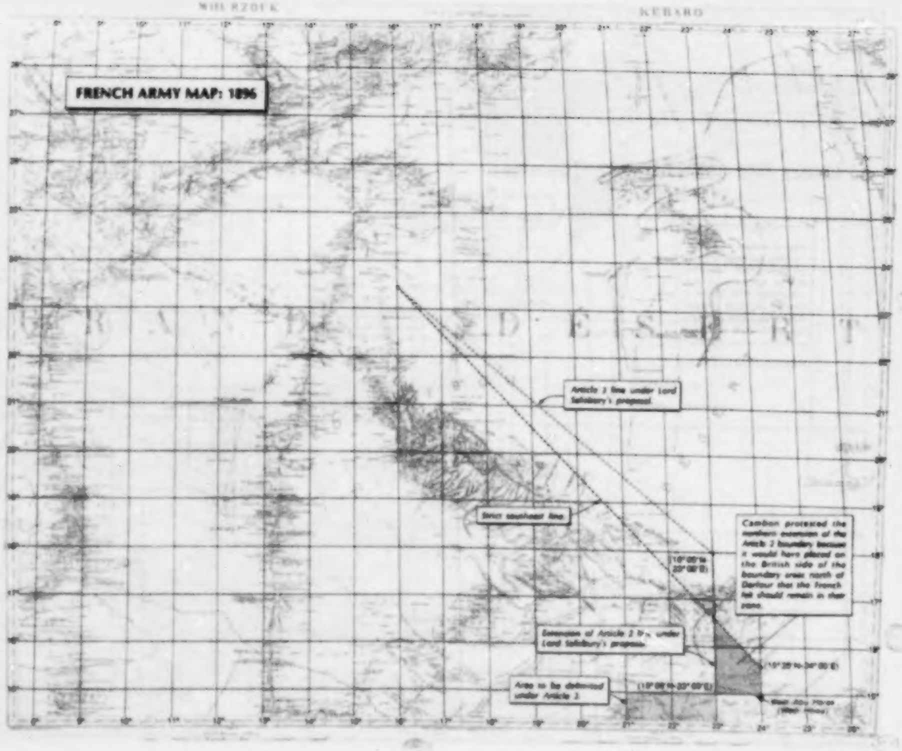
LC-M 30

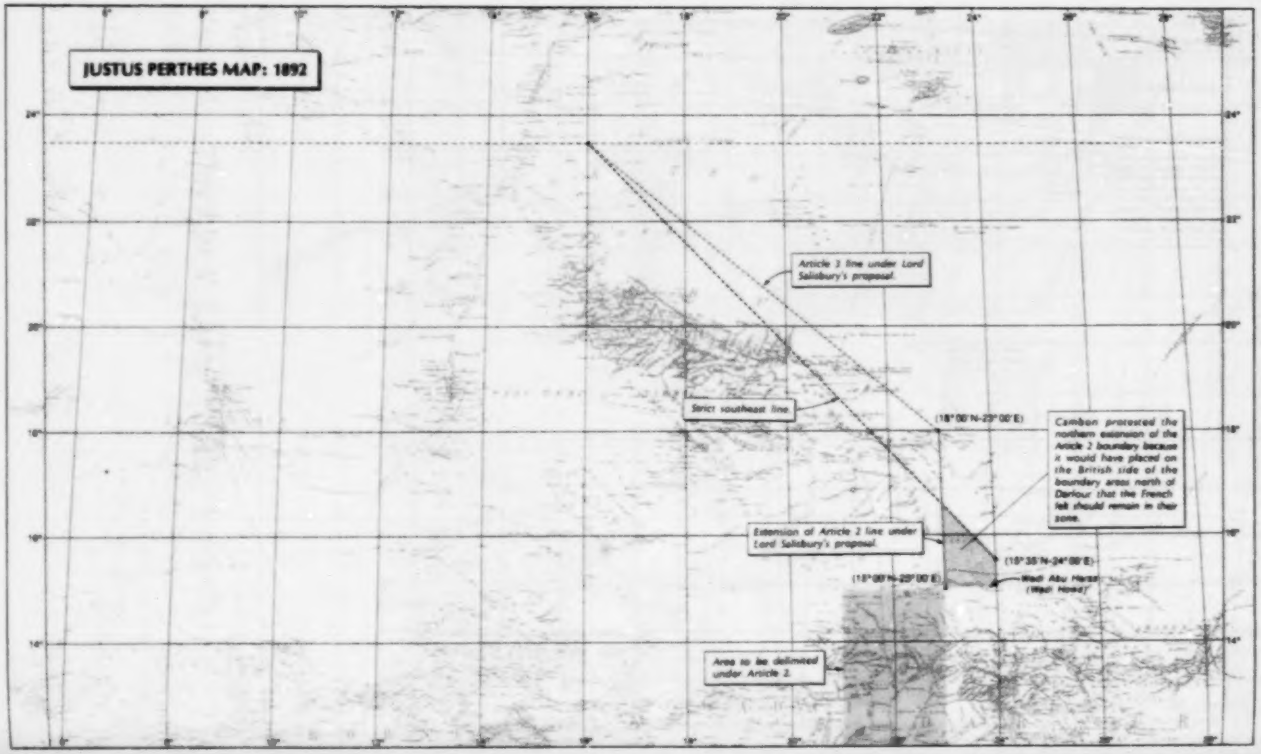
WADAI — DARFUR


Boundary line
WADAI

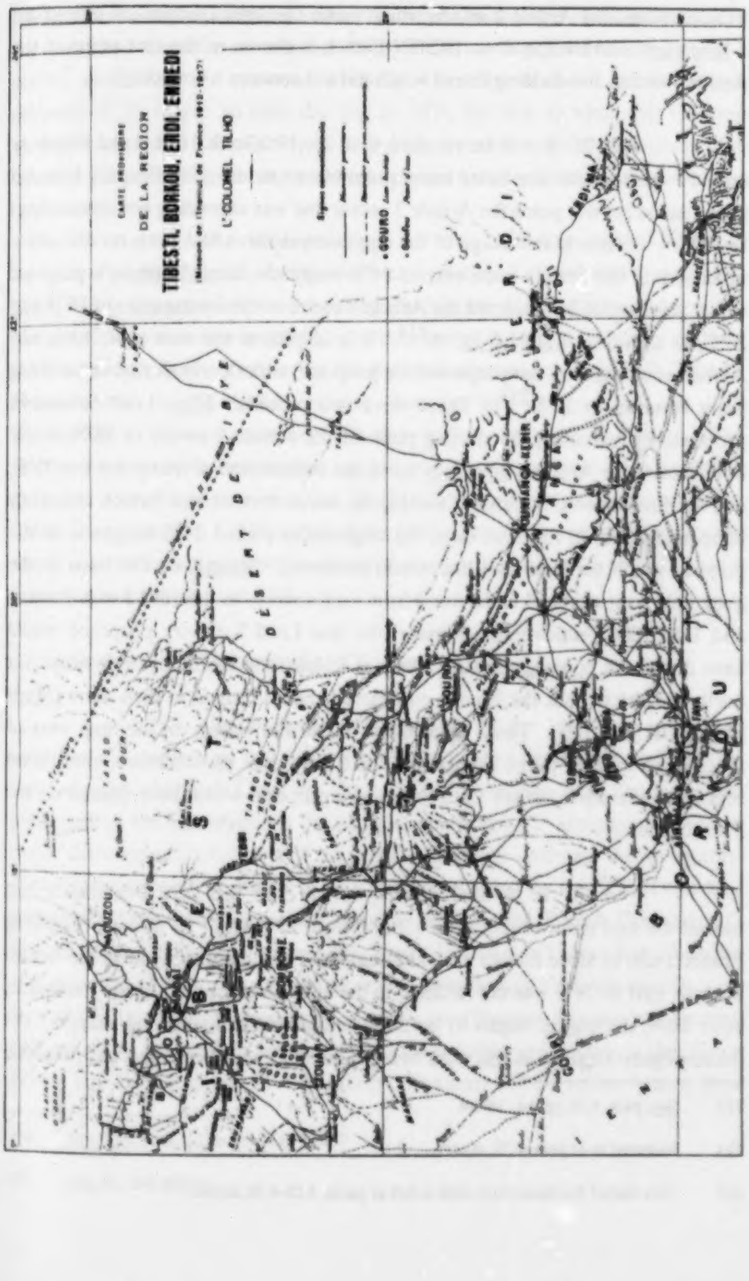
Source: Geographical Section,
Peace Congress, No. 234

LC-M 31A


MOURZOUK
KEBABO
FRENCH ARMY MAP: 1896
DESERT
Article 2 line under Lord Salisbury's proposal.
Strict southeast line
Cambon protested the northern extension of the Article 2 boundary because it would have placed on the British side of the boundary areas north of Darfour that the French felt should remain in their zone.
Extension of Article 2 line under Lord Salisbury's proposal.
Area to be delimited under Article 3


JUSTUS PERTHES MAP: 1892
Article 3 line under Lord Salisbury's proposal.
Strict southeast line.
(18° 00'N-23° 00'E)
Cambon protested the northern extension of the Article 2 boundary because it would have placed on the British side of the boundary areas north of Darfour that the French felt should remain in their zone.
Extension of Article 2 line under Lord Salisbury's proposal.
(15° 35'N-24° 00'E)
(15° 00'N-23° 00'E)
Wadi Abu Haraz (Wadi Howa)
Area to be delimited under Article 2.
24°
22°
20°
18°
16°
14°
22°
24°
26°
28°

LC-M 32


CARTE PROVISOIRE
DE LA REGION
TIBESTI, BORKOU, ERDI, ENNEDI
(1912-1917)
L'-COLONEL TILHO
DESERT DE LIBYE
BORKOU

significant about the map is that it seems to have interpreted the 1919 Convention to have moved the Article 2 sector, which under the 1899 Declaration concerned a boundary, north some 4° to 19°30'N (which is shown as the end point of the Article 3 sector, the dividing line of which did not concern a boundary).

4.175 It will be recalled that, on 19 March 1899, Lord Salisbury tabled a draft whose line bears some resemblance to the 1919 line, for it would have started (at this point the Article 3 sector line was ascending not descending) at 18°N[213]. Since at that stage of the negotiations there had been no discussion of extending the French zone east to 24°E longitude, Lord Salisbury's proposal would presumably have started the Article 3 sector at the intersection of 18°N and 23°E, as shown on Map LC-M 16[214]. It is helpful to mention again here why Ambassador Cambon flatly rejected the proposal, with the result that the starting point reverted to 15°N[215]. There were two reasons. First, Lord Salisbury's proposal, by extending the starting point of the Article 3 sector to 18°N, would have moved the Article 2 boundary up to the intersection of that point and 23°E; and the French were hopeful of moving the sector further east (which ultimately happened when, in the final days, the negotiators picked 24°E longitude as the point at which the southeast line would intersect). Second, on the basis of the geography as it was then understood from such sources as the 1892 Justus Perthes and 1885-1886 French military maps, the line Lord Salisbury proposed would have drawn the boundary in such a way as to leave on the British side areas just north of Darfour that the French considered should remain in their zone (Maps LC-M 31A and 31B). These areas close to Darfour shown on the map were of much more interest to the French and the British than the unknown, unexplored regions to the north, which Lord Salisbury's proposal would have placed on the French side.

4.176 In its final version, Article 3 of the 1899 Declaration had moved the end point of the Article 3 line from 23°E to 24°E, partially satisfying France's aim to move further east, although the French desire to move the Article 2 sector east to 24°E was not satisfied in the 1899 Declaration. In the meantime, after 1899, the region began to be more intensively explored and mapped, the leading figure engaged in this work being Colonel Tilho, whose map was prepared during the mission of the Institut de France (1912-1917) and appears here as Map LC-M 32[216]. On the basis of the more up-to-date knowledge of the geography of the area, and the shift eastward to 24°E of the starting point of the Article 3 sector, which had not occurred when M. Cambon refused Lord Salisbury's proposal of 29 March to start the line at 18°N, the line to which M. Cambon strongly objected in 1899 had by 1919 become not only quite an acceptable line from the French standpoint but a much improved line, especially as a boundary.

---

[213] See, para. 4.23, et seq., above.

[214] Referred to at para. 4.23, above.

[215] This matter has been dealt with in full at paras. 4.18-4.49, above.

4.177 The final paragraph of the 1919 Convention made no mention of a boundary line; it referred back to Article 3 of the 1899 Declaration, which clearly did not concern a boundary. So it is not clear if the map annexed to the 1919 Convention was intended to be interpreted to show a boundary north of the Wadi Howa, in effect extending the Article 2 sector north to 19°30'N latitude. Thus, contrary to the CM's assertion that the last paragraph of the 1919 Convention is "dépourvu d'ambiguïté", it is in fact shrouded in mystery. The archives to date have not yielded up any documents that provide a complete answer to what the parties intended. So, it is not at all surprising that when the Italian Government in 1921 learned of the 1919 Convention and saw the annexed map it reacted immediately with vehement protests to the French and British and continued to do so up until 1935.

SECTION 3. Background and Travaux

4.178 This leads to the background of the 1919 Convention and certain of the documents that Chad has produced from the British archives that supplemented what little Libya was able to find. The striking thing about the final paragraph of the Convention is the odd manner in which it accomplished such a major amendment to Article 3 of the 1899 Declaration - through the recognition of an "interpretation" of Article 3. It is also strange that no mention of this final paragraph of the 1919 Convention found its way into the French Government's Exposé des motifs[217]; and that neither Great Britain nor France had consulted with or informed Italy about their agreement, even though it related directly to an area of the Tripolitanian hinterland to which the Ottoman Empire had asserted right and title, inherited by Italy in 1912. One possible explanation is that Great Britain and France sought to evade their obligations to Italy under Article 13 of the 1915 Treaty of London by concealing this agreement from Italy. From Italy's standpoint it was reprehensible conduct, for Article 13 of that Treaty provided, in pertinent part, that Great Britain and France agreed:

---

[216] See, LM, para. 5.250 and Map No. 67.

[217] See, fn. 204, above.

> "... in principle that Italy may claim some equitable compensation, particularly as regards the settlement in her favour of the questions relative to the frontiers of [Libya] and the neighbouring colonies belonging to France and Great Britain[218]."

The 1919 Convention brought about a modification in Article 3 of the 1899 Declaration that was advantageous to France and, arguably, disadvantageous to Italy, and was contrary to the spirit of Article 13, at the very least. In 1928, the French Ambassador in Rome brought up this very point with the French Minister of Colonies[219].

4.179 The unresolved questions relating to Libya's boundaries had been tabled for negotiation between the Ottoman Empire and France in 1911-1912, but abandoned after the defeat of the Ottomans and the 1912 Treaty of Ouchy. They were then scheduled for discussion between France and Italy in 1914, but abandoned due to the outbreak of World War I. So in 1919 it was notorious that there were boundary questions to be resolved with Italy. Thus, Italy had every reason to be deeply offended by this action taken behind its back concerning areas to which it had inherited rights, titles and claims from the Ottoman Empire.

4.180 It could indeed be maintained that any effect on Italy stemming from the 1919 Convention was invalidated ipso facto since this amendment to Article 3 of the 1899 Declaration, accomplished without Italy's consent or even its knowledge, was in violation of the obligations of Great Britain and France under Article 13 of the 1915 Treaty of London. But this is not at all how the CM views the Convention. The CM contends that the 1919 Convention was opposable to Italy and that, as a result of the 1902 Accord, Italy was precluded on legal grounds from objecting to the 1919 Convention.

4.181 Before turning to these arguments that appear in the CM, certain documentary evidence produced by Chad from the British archives that sheds light on the intended direction of the 1899 southeast line and the reason for the major shift in its direction brought about by the 1919 Convention will be examined.

---

[218] See, LM, International Accords and Agreements Annex, No. 12, and the discussion at LM, para. 5.150, et seq.

[219] See, LM, para. 5.262.

(a) British Travaux

4.182 The CM refers to a letter written on 7 March 1919 by a member (MacMichael) of the British team negotiating the 1919 Convention to another colleague on the team (Vansittart)[220]. Although this may be regarded as part of the travaux of the 1919 Convention, it is used in the CM as a sort of ex post facto travaux for the 1899 Convention. According to a 1922 British Foreign Office note (referred to in the LM[221]), written in the context of preparing Great Britain's response to Italy's protest against the 1919 Convention, the Convention was negotiated, on the British side, by the British Peace Delegation, relying on the advice of Sir R. Wingate and Mr. MacMichael of the Sudan Government Service. The note contains these interesting observations:

> "... there is no record in the department to show whether any account was taken of the effect it would have upon Italian territory. The object of increasing the French Sudan was to place under their responsibility and control certain turbulent tribes who were hitherto masterless."

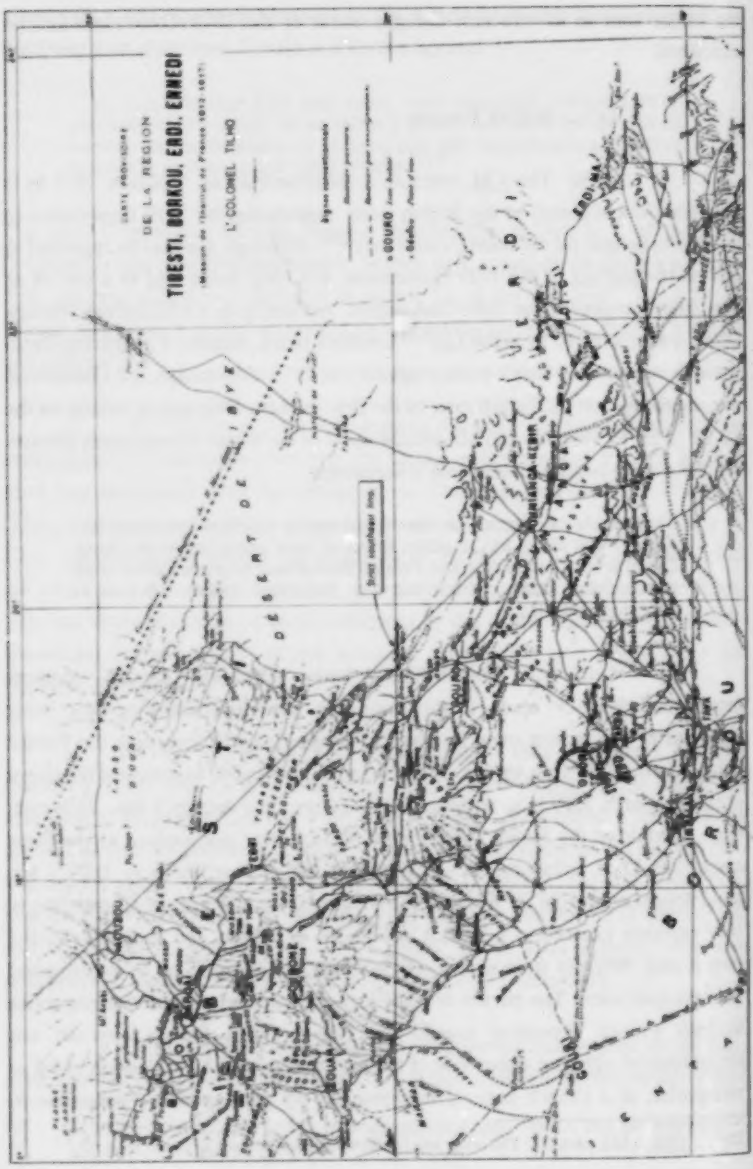
4.183 Mr. MacMichael's letter addressed certain revisions recommended to be made in the maximum and minimum proposals being prepared by the British team for the forthcoming negotiations with the French that led to the 1919 Convention. In his letter, he proceeded to interpret the intent of the parties in 1899 in describing the direction of the Article 3 line. However, these officials of the Sudan Government Service were not looking at the same maps that Lord Salisbury and M. Cambon had before them in 1899. Mr. MacMichael quotes Sir R. Wingate as saying that "the spirit of the Convention of 1899 certainly pointed to a French occupation of Tibesti and Ennedi". Such a view is very different from what Lord Salisbury had in mind, as he explained at the time and later. The parties in 1899 were only concerned with drawing a line to limit French expansion toward the Nile. Great Britain opposed any recognition of rights on either side of the line; and Article 3 avoided any claim or recognition of a French zone of influence, as the travaux show. What Sir R.

---

[220] CM, p. 152, para. 37. The letter was furnished as Production 12.

[221] See, LM, para. 5.184.

LC-M 33


CARTE PROVISOIRE
DE LA REGION
TIBESTI, BORKOU, ERDI, ENNEDI
(Mission de l'Institut de France 1912-1917)
L' COLONEL TILHO
Signes conventionnels
GOURO
DESERT DE LIBYE
ERDI
OUNIANGA-KEBIR
TIBESTI
BORKOU
GOURO

Wingate and Mr. MacMichael had also overlooked in trying to interpret the 1899 Declaration was that a strict southeast line drawn on 1899 vintage maps placed the regions of Tibesti, Ennedi, Ounianga and Borkou on the French side of that line (Maps LC-M 31A and 31B referred to above at paragraph 4.175). As has been demonstrated earlier, on the much improved maps available in 1919, which had the benefit of a major advance in knowledge of the geography of the region, in large part the result of Colonel Tilho's work, a strict southeast line had a very different result. This point has been fully discussed and illustrated above, starting at paragraph 4.71.

4.184 In his letter of 7 March 1919, Mr. MacMichael explained why he considered a line drawn due southeast from the Article 3 starting point at the Tropic of Cancer to be "ridiculous". This passage and accompanying footnote are quoted in full in the CM[222]. All the reasons he gave, however, were based on hindsight: on the geography as it was known 20 years later and set forth on far more accurate maps[223]. His reasons were these:

- A due southeast line would intersect 24°E longitude to the south of the northern boundary of Darfour contrary to the wording of the 1899 Declaration;

Comment: There was no agreed northern boundary for Darfour, at best a notional one. The 1899 Declaration did not refer to such a boundary; the Article 3 sector was described only in terms of starting to the north of 15°N latitude. Article 2 of the Declaration was concerned with the dividing line between Ouadaï and Darfour between 21°E and 23°E. The northern boundaries of these regions were not dealt with; the only indication was that the Article 3 sector would start north of 15°N.

- A due southeast line would intersect 24°E at 15°30'N, that is, south of Wadi Howa;

Comment: The calculation is correct; however, the Justus Perthes and 1895-1896 French military maps, introduced in evidence by Chad and correctly identified as the two maps consulted by the negotiators in

---

[222] CM, p. 152, para. 37.

[223] See, e.g., CM, pp. 148-149, paras. 23-26, where Chad emphasizes the same point concerning the lack of accurate knowledge of the geography in 1899. See, Map LC-M 33, Colonel Tilho's map (1917) with a strict southeast line drawn on it. This illustrates the advance made in knowledge of the geography of the region over the period following the 1899 Declaration.

1899, show that point as lying north of Wadi Howa, in the case of the French map, and almost exactly on the Wadi, in the case of the German map (Maps LC-M 31A and 31B). Wadi Howa is identified on these maps by its older Arab name "Ouadī Abou Haras". The 1899 BCAF map also identifies this feature as "Abou Haras" and places it where the German map does[224].

- A due southeast line would cut off half of Tibesti and Ennedi from the French and give to the British the site of the French post of Ounianga;

Comment: On the 1895-1896 French map a due southeast line cuts across to the north of Ounianga and the French post at Ounianga Kebir, leaving it on the French side of the line. (This is true, in fact, even on modern maps.) Of course, the 1919 French post had no bearing on the situation in 1899. At the time, the French were hundreds of miles away to the southwest, having only just begun to reach Lake Chad.

So the reasons why a strict southeast line appeared "ridiculous" to Mr. MacMichael in 1919 did not exist in 1899, so far as the British and French were aware; and consequently to them a strict southeast line carried out their intent at the time. However, it becomes increasingly clear in examining this 1919 evidence that the parties agreed to shift the line 4° to the north as a result of what the more accurate maps available to them revealed.

4.185 Mr. MacMichael goes on to say that:

> "In all but our most recent maps we used to follow the spirit of the 1899 agreement and have this S.E. line drawn not due S.E. but roughly in a southeasterly direction[225] (as on the tracing I sent you) so as to leave Tibesti and Ennedi to the French and join meridian 24° soon enough to follow it southwards as it ought to do in the wording of the Declaration. What it comes to is that all concerned must admit the Declaration as worded in this respect means nothing at all ...[226] ."

Mr. MacMichael might have had a good point if he had written to his British colleague that a due southeast line in 1919 seemed to make no sense and should be modified, but only because in 1919 the parties may no longer have been considering the line in the limited negative sense intended by Lord Salisbury and

---

[224] See, Map LC-M 18C referred to at para. 4.36, above.

[225] These are the precise words that appear in the final paragraph of the 1919 Convention.

[226] CM, Production 12.

M. Cambon in 1899, as expressed in Article 3. In 1899, Article 3 made good sense and it made good sense to interpret the line as a true southeast line. Mr. MacMichael's reference to "our" most recent maps may have been to maps of the Sudan Government Service; but official British Government maps of 1906, 1914 and 1916 showed a true southeast line. This is illustrated by Maps LC-M 14A and 14B (referred to at paragraph 4.18 above) and on Map No. 63 in the LM.

4.186 Yet, in spite of his mistaken analysis of the 1899 Declaration in the light of hindsight in 1919, Mr. MacMichael's recommendation to Mr. Vansittart is interesting, for he suggested a revision in Great Britain's maximum claim that would read as follows:

> "... the line drawn, in accordance with the literal interpretation of the Declaration of 1899, due south-east from the intersection of the Tropic of Cancer with the 16th meridian, or (supposing the said line to have been drawn, not due S.E., but in a roughly southeastern direction in such a manner as to include in the French sphere the parts of Tibesti and Ennedi lying west of the 24th degree of longitude) [to][227] the 24th degree of longitude at or near the intersection of that parallel with the 17th degree of latitude, but, in any case, in such a manner as to leave .... (etc., as in memo)."

The two interesting points are, first, that the contemplated end point of the south east line was 17°N not 19°30'N; and second, that Tibesti and Ennedi were described as lying in the French "sphere", and there is nothing to suggest that a boundary line was contemplated in that sector.

4.187 As noted above, the negotiation of the 1919 Convention involved, on the British side, the Sudan Government Service. The interest of the Sudan at the time was to have a clearly defined boundary between the Sudan and French Equatorial Africa, particularly as between Ouadaï and Darfour. The Convention did not concentrate on the northern part of the boundary but rather on the boundary between Ouadaï and Darfour south of the Wadi Howa (15°45'N), which concerned the Anglo-Egyptian Sudan. This no doubt explains why the two principal British negotiators were from the Sudan Government Service. According to the internal Foreign Office note of 13 January 1922 referred to in paragraph 4.182 above, it appears that the British negotiators apparently took no account of the effect which the 1919 Convention might have on Italian territory, and that the object of increasing the French Sudan by fixing the point of intersection of the southeast line in the 1899 Declaration at 19°30'N latitude was to place under French responsibility and control certain turbulent tribes who were hitherto masterless.

---

[227] Added to the text of the letter. This word appears to have been accidentally omitted.

4.188 This same Foreign Office note sheds light on the intent and effect of the 1919 Convention. The note was prepared in connection with responding to the first Italian protest lodged against the 1919 Convention[228]. It starts off this way:

> "In this long and very complicated note the Italian Ambassador has put his finger on a certain discrepancy between our Conventions with the French of March 21st, 1899 and September 8th, 1919 ...[229]."

The note goes on to summarize the Italian complaint, particularly as regards the direction of the Article 3 line, which the Italians maintained was intended to be exactly southeast. It confirms the accuracy of the Italian reference to British maps of 1906 and 1914 as showing a strict southeast line[230]. In the course of its analysis of the Italian position, this note makes the following observation:

> "The effect therefore of the Convention on September 8th, 1919 is to swing up the frontier in a northernly direction through a considerable arc, thereby giving to the French an extensive area of the Anglo-Egyptian Sudan whose northern frontier as defined by the Boutros-Cromer Convention of January 19th, 1899 follows Lat. 22N. It also gives to the French a smaller portion of the hinterland of Tripoli and as such, Italian territory ... ."

4.189 This Foreign Office analysis proceeds to say that, although the Italian protests "more intimately concern the French", nevertheless, since Great Britain was also a party to the Convention, "the Italians have a right to protest to us". It goes on to consider how to coordinate the British and French replies to Italy, coming up with the following idea, though noting that it would probably not prove acceptable to Italy:

---

[228] See, para. 4.204, et seq., below.

[229] LM, British Archives Annex, p. 138.

[230] The 1916 British War Office map, showing a strict southeast line, was cited in the LM at para. 5.182, where a reproduction appears as Map No. 63. A larger colour reproduction of that map was furnished by Libya to the Court. The 1906 and 1914 maps appear as Maps LC-M 14A and 14E referred to at para. 4.18, above. A larger reproduction of each of these maps has also been furnished to the Registry. Libya has no evidence of any French protest to these maps.

> "If the French agree we could, of course, contend that the [1899 Declaration] only indicated the general direction of the frontier ... and that the maps published between 1899 and 1919 were merely rough indications of a frontier which had never been delimited, whereas the [1919 Convention] gave a more precise interpretation of this vaguely defined frontier."

This would not have been a forthright position for the British Government to take, and as will be shown below, the British Government did not follow the suggestion.

4.190 As was the practice of the Foreign Office, this note was, in turn, commented on by other interested offices, and these notes appear in the same file. One hand-written note observes that:

> "The Italians have always hankered after a line running down south as far as latitude 16° north or even 15° north ...[231] ."

Another note starts off this way:

> "This is a dreary question - as dreary as the desert of which it treats. ... [The Italians] make the claim with just enough semblance of justification to be tiresome."

This note goes on to suggest that it might be argued that the wording of Article 3 did not exclude the possibility that -

> "... either signatory to it might have claimed, in the course of years and with the increase of geographical knowledge, a rectification of the frontier to suit local conditions."

However, the ensuing analysis of this commentator is full of flaws. For example, it constructs an argument around the failure of the Ottoman Empire to protest the 1899 Declaration, when in fact the Ottoman protests to both Great Britain and France were in the Foreign Office files. It was the comment of the Legal Adviser's Office that carried the day and became the official position of the British Government. This comment by H.W. Malkin, who later became Legal Adviser of the Foreign Office, was summarized and discussed in Libya's Memorial at paragraphs 5.202 and 5.203.

---

[231] L.M. British Archives Annex, p. 142.

4.191 The essential points made in the Malkin note, written in May 1922, were these:

- The 1899 and 1919 agreements were between Great Britain and France and, hence, could not dispose of territory belonging to a third Power;
- To the extent they purported to do so, their provisions were void;
- Hence such rights as Turkey originally possessed, and Italy might then possess, could not be affected by these agreements;
- The 1899 Declaration involved no recognition of sovereignty over any territory at all:

> "The upshot of it all is that to my mind the two Anglo-French agreements did not and could not affect the rights of Italy in any territory which belonged to her. The question whether any of the territory to which those agreements applied is territory now belonging to Italy depends of course on the question of fact as to how far Turkish sovereignty extended[232]."

(b) Tittoni Speech

4.192 Another strand in Chad's argument is a speech made by Italian Foreign Minister Tittoni on 27 September 1919. It comes up in the CM's discussion of the 1902 Accord[233], but is more appropriately dealt with here in the context of the two 1919 agreements. It was a statement made to the Italian Parliament a few weeks after the Convention of 8 September 1919 had been concluded, a fact about which the Italian Government would be kept in the dark until early 1921. Its purpose was, in part, to explain the Franco-Italian (or Pichon-Bonin) Accord of 12 September 1919, which concerned Libya's western frontier, and to which Italy was a party, unlike the Convention of 8 September. When Italian Ambassador Bonin signed the 12 September Accord, he was totally unaware that his co-signatory M. Pichon had, four days earlier, signed the Convention of 8 September 1919 with Great Britain, which directly concerned Italy's territorial interests in the Libyan hinterland to the south of Libya, as the British Foreign Office had noted. Foreign Minister Tittoni was similarly in the dark when he addressed the Italian Parliament.

---

[232] LM, British Archives Annex, p. 149.

[233] CM, p. 183, para. 154.

4.193 Signor Tittoni remarked that the cession of territory by France in the 12 September Accord, carrying out a French commitment made four months earlier during the meetings of the Colonial Commission to discuss Italy's compensation under Article 13 of the 1915 Treaty of London, was useful but "en somme peu de chose": it certainly had not fulfilled France's obligations to Italy under Article 13 in the view of Italy. He told the legislators that:

> "La question du Tibesti et du Borkou, ou d'une autre compensation au lieu de ces régions, reste ouverte et sera l'objet de négociations ultérieures[234]."

In his brief résumé of the Colonial Commission negotiations, he mentioned that the subject of Tibesti, Ennedi and Borkou had been raised at that time. And then he took the Italian public (and legislators) lightheartedly to task, saying that in Italy when one could not obtain something, it excited a great desire to have it; but when something was obtained, very little satisfaction was expressed. He gave this example:

> "Je me rappelle qu'au commencement de la guerre de Libye, lorsque le public italien sut que[235], dans l'accord Prinetti-Barrère du 1er novembre 1902, nous avions reconnu la frontière de la Convention franco-anglaise du 15 juin 1898, assignant à la France le Tibesti et le Borkou, il n'y eut qu'un cri dans les journaux, brochures et conférences: nous devions à tout prix exiger le Tibesti et le Borkou qui constituent l'hinterland nécessaire de la Libye! - Et aujourd'hui, à peine a-t-on su que[236] nous étions sur le point de les avoir, un cri s'est élevé en sens contraire pour protester contre une acquisition dénoncée comme inutile et onéreuse pour nous."

4.194 Even if it were to be granted that Signor Tittoni might have chosen his words more carefully - for example, he referred to the 1898 Convention instead of the 1899 Declaration, and totally misstated its effect, for it did not *assign* the regions mentioned to the French - it is remarkable what an important place this supposed admission on his part was later given to support the thesis, subsequently advanced by France, that Italy in the 1902 Accord had recognized the Article 3 southeast line. When such weak evidence is paraded to support an argument, it immediately casts doubt on the validity of the argument. In this regard, the *CM* appears to have given the speech somewhat less prominence than did the French.

---

[234] The translation into French is taken from the BCAF. See, LM, Exhibit 42.

[235] The words in Italian were "seppe che".

[236] The words in Italian used were "è saputo che".

4.195 If the speech is examined with care, what the Italian Foreign Minister was saying - using exaggeration to put across his point - was that when the *secret* 1902 Accord became known in Italy (around 1914), there was an outcry, particularly in the press, that in the Accord Italy had wrongly surrendered its position regarding these regions. Signor Tittoni does not say he agreed with that interpretation - but this was what was being bruited about at the time. When subjected to calm analysis, it became evident that in the 1902 Accord Italy had done nothing of the kind, as the Italian Colonial Ministry pointed out at the time and subsequently. The main point made in this speech concerning Tibesti and Borkou was that the question of to whom they belonged was open and remained to be resolved by negotiations with France in the future.

SECTION 4. Other Contentions of Chad

4.196 Most of the *CM*'s contentions regarding the 1919 Convention have been mentioned above: those primarily concerned with the interpretation of its text. The *CM* makes three other arguments. *First*, it contends that the final paragraph of the Convention did not modify in any way Article 3 of the 1899 Declaration; it was an "interprétation authentique" by the original parties to the Declaration[237]. It has been shown above that this is wrong; the final paragraph was an amendment of Article 3 that brought about, *inter alia*, a significant alteration in the direction of the southeast line by moving its end point north by 4° of latitude, as the Foreign Office had recognized. *Second*, the *CM* repeatedly states that the southeast line shown on the map referred to in the 1902 Accord - the *Non-Annexed Map* - was *identical* to the line that would result from the final paragraph of the 1919 Convention[238]. This is demonstrably wrong; the map's line intersected 24°E at 19°N, as the French Government admitted on many occasions and illustrated on its maps. Two lines starting from the same point and intersecting 24°E at two different points - 19°N and 19°30'N - are not the same line, as Map LC-M 34 demonstrates on a one degree (1°) grid superimposed on the Non-Annexed Map.

---

[237] *CM*, pp. 185-186, paras. 164-165.

[238] *See*, *e.g.*, *CM*, pp. 184-185, para. 159.

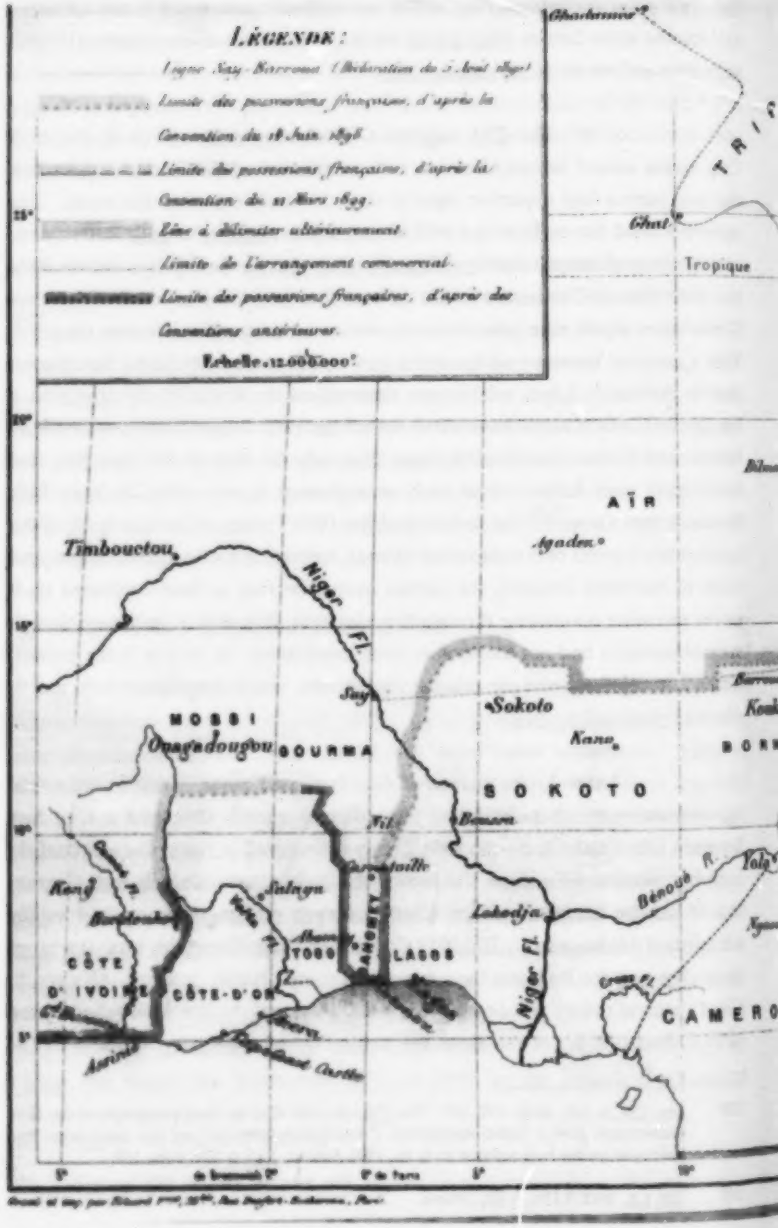
4.197 The CM suggests a fall-back position: even if the 1919 Convention should be considered to have modified the 1899 Declaration - which the two parties had a perfect right to do -, it would not alter the result. For Article 3 (and Annex I) of the 1955 Treaty made a renvoi to both instruments; and by virtue of the principle lex posterior priori derogat (codified in Article 30 of the 1969 Vienna Convention on the Law of Treaties) the provisions of the 1919 Convention would take precedence in the event of conflict between them[239]. This argument, however, makes sense only in the context of Chad's first theory: that in Article 3, Libya and France determined the boundary by renvoi to a specific line, which would have effect even if the 1919 Convention between Great Britain and France remained res inter alios acta for Italy at the time Italy had sovereignty over Libya. That such an argument is not valid has been fully demonstrated above[240]. In Article 3 of the 1955 Treaty, under any or all of the appropriate canons of interpretation (literal, contextual, in the light of its purpose or in its historical context), the parties cannot be said to have expressed their intent to create boundaries through the operation of Article 3 itself even though such boundaries had not theretofore been established. In Article 3, the parties, instead, recognized already existing boundaries, which they undertook not to contest (uti possidetis juris).

4.198 In the context of Chad's second theory - that international agreements in effect in 1951 had prior thereto already delimited a boundary between Libya and Chad - the 1955 Treaty only served to recognize and confirm such boundaries. Of course, the second theory is sustainable only to the extent that it can be demonstrated by Chad that such prior agreements had validly established this boundary. The 1919 Convention cannot meet this test. It was res inter alios acta for Italy and the subject of repeated Italian protests. As a result, Chad's second theory falls apart if it is established that the line established by the 1919 Convention is not the same line as that contemplated by Article 3 of the

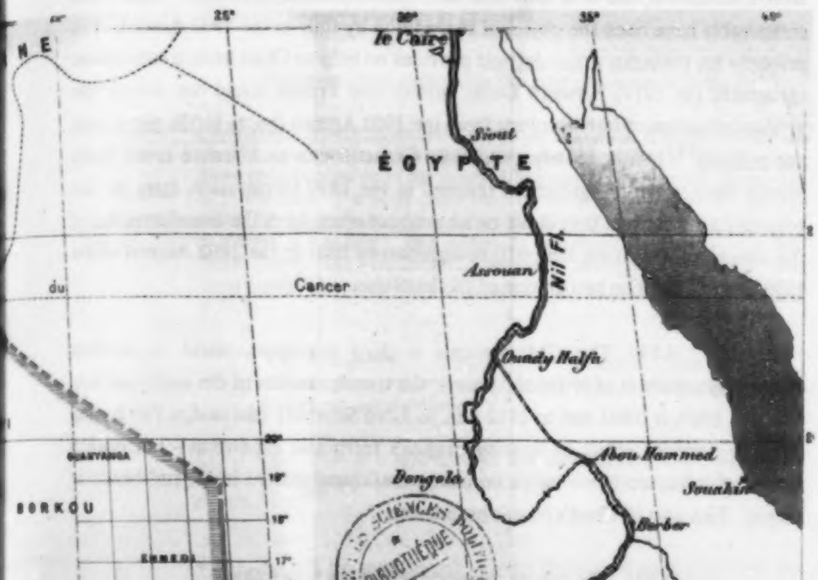
---

[239] See, CM, p. 186, paras. 166-167. The CM contends that the final paragraph of the 1919 Convention gave a verbal description ("description littéraire") of the exact same line portrayed on the map referred to in the 1902 Accord. CM, p. 187, para. 169.

[240] See, e.g., para. 3.114, et seq., above.


LÉGENDE :
Ligne Say-Barroua (Déclaration du 5 Août 1890)
Limite des possessions françaises, d'après la Convention du 14 Juin 1898
Limite des possessions françaises, d'après la Convention du 21 Mars 1899.
Zône à délimiter ultérieurement.
Limite de l'arrangement commercial.
Limite des possessions françaises, d'après des Conventions antérieures.
Echelle 1:12.000.000
Ghadamès
TRI
Ghat
Tropique
25°
20°
15°
10°
5°
AÏR
Agadez
Bilma
Timbouctou
Niger Fl.
Say
Sokoto
Kano
Barroua
Kouka
BORN
MOSSI
Ouagadougou
GOURMA
SOKOTO
Nikki
Boussa
Carnotville
Salaga
Kong
Comoé Fl.
Bondoukou
Volta Fl.
Abomey
DAHOMEY
TOGO
LAGOS
Lokodja
Bénoué R.
Yola
Niger Fl.
CÔTE D'IVOIRE
CÔTE-D'OR
Cross Fl.
CAMERO
Assinie
Accra
Cape Coast Castle
0° de Paris
de Greenwich 0°
Gravé et imp. par Erhard Frères, Rue Denfert-Rochereau, Paris

LC-M 34


NE
le Caire
Siout
ÉGYPTE
Assouan
Nil Fl.
du
Cancer
Ouady Halfa
Abou Hammed
Dongola
Souakin
Berber
OUANYANGA
BORKOU
ENNEDI
Omdurman
Khartoum
Atbara
KORDOFAN
Abechr
El Facher
El Obéid
OUADAI
DARFOUR
ABYSSINIE
Nil Fl.
B. el Arab
Hofrat-en-Nahas
B. el Ghazal
Fachoda
Chari R.
Sobat R.
Meshra-er-Rek
R. Soueh
Rohl R.
FRANÇAIS
CONGO
Lado
Nil Fl.
M'bomou R.
Ouellé R.
ÉTAT DU CONGO
20°
25°
30°
35°
40°

SCIENCES POLITIQUES BIBLIOTHÈQUE

1899 Declaration, for it is only the 1899 line - not the 1919 line - that could conceivably have been the object of recognition by Italy in the 1902 Accord. The principle lex posterior priori derogat provides no help to Chad here: a subsequent agreement (in 1919) between Great Britain and France could not modify the juridical situation of Italy resulting from the 1902 Accord (pacta tertiis nec nocent nec prosunt[241]) without Italy's consent. Great Britain and France could freely modify their previous agreement reached in the 1899 Declaration, inter se; but without Italy's consent they could on no account accomplish the transformation of the alleged (and entirely fictional) recognition by Italy in the 1902 Accord of the 1899 line to an Italian recognition of the 1919 line.

4.199 The CM presents a third argument, which is another essential component of its second theory: the transformation of the southeast line, which in 1899, in 1902 and in 1912 was, as Lord Salisbury had said, a line having only the negative effect of limiting France's territorial expansion - not even a sphere of influence line - into a boundary line opposable to Italy (and hence to Libya). This part of Chad's case is brand new.

4.200 The course this argument takes is as follows:

- The 1919 Convention firmed up the language of the 1899 Declaration by repeatedly using the term "boundary"[242];

Comment: The term "boundary" appears only in the paragraphs of the Convention relating to the Article 2 sector, which in both the Declaration and the Convention did concern a boundary. The term does not appear in the final paragraph, which concerned Article 3. So the CM's observation is not at all relevant.

- Admittedly, there was a divergence in view between the British and the French as to whether the final paragraph of the 1919 Convention concerned a boundary rather than a sphere of influence delimitation[243];

---

[241] Art. 34, 1969 Vienna Convention.

[242] See, CM, p. 187, para. 170

[243] See, CM, p. 187, para. 171.

Comment: It would be more accurately described as a fundamental difference between them as to its intent.

- However, Italy sided with the interpretation of France[244].

Comment: If this argument were to be accepted, it would create an absurd new canon of treaty interpretation: where a fundamental divergence in view as to the intent of a treaty exists between the parties to it, the view of a third State may be invoked to resolve it. In any event, though Italy was fearful that the 1919 Convention was intended to delimit a boundary, and advanced arguments to show why it had these fears, the Italian Government strongly, repeatedly and consistently protested the 1919 Convention and rejected its application to Italy.

> "Ce caractère définitif est accentué par la démarcation sur le terrain de la limite, précise mais théorique, ainsi définie[245]."

Comment: This is a reference to the demarcation approved in the 1924 Protocol and Declaration, two agreements not appearing on the Annex I list[246].

4.201 As will be seen shortly, Great Britain assured Italy that the 1919 Convention did not affect at all any rights Italy might have over the territory in question. However, if France's interpretation were correct, it would mean that the 1919 Convention had accomplished a major modification of the 1899 Declaration - not only as to the direction of the southeast line but in its intended effect, turning what in 1899 was a line limiting France's territorial aspirations into a boundary opposable not only to Great Britain and France but also to Italy.

4.202 Another ingredient has been added to Chad's contentions as to the transformation of the 1899 southeast line into a boundary in 1919. It appears in Chapter V, Section III, starting at page 241, and concerns what the CM calls the dual importance of French effectivités. Since this subject is dealt with in its factual and legal aspects in Part V below, it is sufficient here to summarize this argument as it applies to the second theory of Chad's case[247].

---

[244] See, CM, p. 188, para. 172.

[245] CM, p. 188, para. 172.

[246] It is not clear what the CM means by "théorique". The same term appears on Colonel Tilho's 1917 Map (Map LC-M 32 referred to at para. 4.176, above) written along the southeast line: "Frontière théorique".

[247] It will be recalled that Chad's third theory is based entirely on effectivités.

This may be accomplished simply by quoting from the conclusions set out at the end of the CM:

> "... à partir de 1913, la France exerça son autorité souveraine de manière suffisante pour lui permettre juridiquement de consolider son titre de souveraineté sur un territoire allant jusqu'à la ligne définie avec la Grande-Bretagne en tant que limite de sa sphère d'influence. Ainsi, la ligne convenue, acceptée par l'Italie en 1902 était, en 1919, devenue une frontière internationale[248]."

Thus, the CM advances a second basis for the transformation into a boundary that it claims the southeast line underwent by 1919: French effectivités; and it argues that these effectivités were recognized by Italy[249]. Moreover, this argument based on effectivités is used to rationalize the diametrically opposed views of the French and British Governments as to the intent of the 1919 Convention: for France, which allegedly had effectively occupied the area up to the southeast line, the line had become a boundary; for Great Britain, which had not, it was not viewed as a boundary. However, the CM never addresses the question of how a line emerging from a treaty can be regarded as an international boundary for one of the signatories but not for the other.

SECTION 5. Aftermath of the 1919 Convention: the 1924 Demarcation; Italian Protests; French and British Attempts to Reconcile Their Entirely Different Views in Replying to Italy

4.203 The Boundary Commission provided for under Article 4 o the 1899 Declaration finally got down to work after all the years that had elapsed completing its task in 1924. It was noted earlier, as well as in the LM[250], that th Commission's mandate under the Declaration was restricted to the Article 2 sector (up to 15°N), which concerned a real boundary delimitation. However, a the 1924 Protocol reveals, the Commission continued its work of delimitation al the way north to 19°30'N latitude[251]. Did the Boundary Commission exceed its jurisdiction? Or was it justified in continuing on north because the area being delimited up to 19°30'N had become part of the Article 2 sector, and hence concerned a real boundary? The travaux turned up so far in the archives do not directly answer these questions.

---

[248] CM, p. 376, Conclusion 1 (xii).

[249] See, CM, p. 256, para. 190, et seq.

[250] See, LM, para. 5.215, et seq.

4.204 Shortly after the Italian Government became aware of the 1919 Convention, it wrote to France and Great Britain for information[252]. The British Government supplied a copy of the Convention and advised the Italian Ambassador in London that the Convention had not been notified to Italy through an oversight. Quite an oversight, from the Italian point of view! The Italians addressed a similar enquiry to the French Government (on 9 September 1921), which was answered by the French Ministry of Foreign Affairs on 8 October 1921. This letter and subsequent exchanges between Great Britain and France in their year-long struggle to coordinate their positions, as well as the official replies of each to Italy, are of unique importance to this case. The CM is notably incomplete in its discussion of these exchanges and in the documents it has furnished, claiming in some cases not to have been able to find them. In contrast, these exchanges are examined in detail in the LM and the complete evidence is annexed thereto[253]. The French note verbale of 8 October 1921 is a case in point: it is not even mentioned in the CM. Its text may explain why[254].

4.205 This 8 October note was in response to Italy's enquiry of 19 September concerning the 1919 Convention, which Italy had only just found out about. In its note, Italy brought out the fact that it had been notified of the 1899 Declaration (and its meaning had been explained in 1900 by the French

---

[251] CM, Annex 84, contains the instructions given by the the French Minister of Colonies to the French Commissioners. Without elaboration, they were directed to continue on to 19°30'N. These instructions contain an interesting remark concerning the map annexed to the 1919 Convention. Since no map was referred to in the Convention, the Minister of Colonies said: "le document géographique annexé à l'accord ne pouvait être donné qu'à titre indicatif". This was the exact adjective applied by Foreign Minister Delcassé, in forwarding the Livre jaune edition of the 1899 Declaration to M. Cambon, to describe the famous map annexed to it, the Non-Annexed Map. See, para. 4.59, above.

[252] See, LM, para. 5.188, et seq.

[253] See, LM, paras. 5.188-5.214. The CM seems even to imply that Italy waited two years before protesting the 1919 Convention, as if Italy had been made aware of the 1919 Convention when it was signed, which was not the case. See, CM, p. 190, para. 180.

[254] See, LM, Exhibit 46.

Ambassador in Rome, M. Barrère); in contrast, Italy had not been informed at all about the 1919 Convention. The French note of 8 October, seeking to find an excuse for not having informed Italy, started off by saying that the 1899 Declaration and the 1919 Convention "ne sont pas en contradiction". It continued that the expression "dans la direction du Sud-Est" in Article 3 was "assez vague et n'implique nullement un tracé de frontière d'un caractère absolu" -

> "... d'autant que la dite déclaration, contre l'usage, n'est pas accompagnée de carte ou de croquis."

The note added that French maps had shown a line that crossed to the north of Tibesti and Borkou and that Italian maps also did not show the end point of the line below 18°N (referring to a map in an Italian unofficial atlas).

4.206 Leaving aside for the moment the erroneous statement about the line shown on Italian maps - a remark the Italians were soon to correct - what is of special interest is the statement in the official French response to Italy that the 1899 Declaration was not accompanied by a map or sketch. In other words, in 1921, the official French view was that the map annexed to the 189 Livre jaune - the Non-Annexed Map - was not a map intended to accompany the Declaration so as to represent the intent of the parties as to the direction of the southeast line. At most, in the words of M. Delcassé in 1899, it was only "une carte indicative".

4.207 The CM introduces its short and conspicuously incomplete discussion of the Italian protests and the British and French responses with two remarks. First, it asserts that in spite of the Italian Government's protests, Italy had no legal right to refuse to recognize ("récuser") the 1919 line[255]. Second, it admits that Italy's protests were constant right up until 1935, although "ses motifs le furent moins"[256]. The CM then attempts to show a lack of consistency in what Italy said in its protests. However, the CM does not apply the same test to French dispatches and notes verbales during the period 1921-1935; in addition, the CM, aside from ignoring certain of the key documents, such as the note verbale of 8 October 1921 just discussed, has mixed up dates and annex references.

---

[255] CM, pp. 189-190, para. 178.

[256] CM, p. 190, para. 182.

4.208 To take one example, the *CM* refers to a document dated 12 December 1921 as being France's official reply to Italy's protest[257]. That, however, is the date of Italy's formal protest to France. It is important to correct this seemingly minor error in dates, for the offical French *note verbale* was dated 8 February 1923 (and the British *note*, 5 February 1923[258]). The correction of the dates reveals that it took Great Britain and France over a year to coordinate their replies to Italy because of the widely divergent views each Government had as to the meaning and effect of the 1899 Declaration and the 1919 Convention.

4.209 The *CM* omits the series of exchanges between France and Great Britain in their unsuccessful effort to resolve the fundamental differences between them in order to present a common front in replying to Italy's protests. These are among the most important documents in this case, for they show the differing interpretations given the 1919 Convention in 1922-1923 by its two signatories, as well as their interpretation of the 1899 Declaration, which the Convention amended. The *LM* dealt in full with these documents[259].

4.210 The *CM* covers this Anglo-French divergence by repeating the French Government's arguments in its reply of 8 February 1923. It does not give the British position, except to say this:

> "Sans entrer dans cette discussion, le *Foreign Office* s'abrita derrière le fait que les accords de 1899 et 1919 se bornaient à délimiter des zones d'influence en faisant valoir que, si l'Italie estimait avoir des droits sur cette région, c'est sur elle que pesait le fardeau de la preuve, tout en relevant que, pour sa part, le Gouvernement français avait d'autres arguments à opposer à l'Italie[260]."

This summary hardly does justice to the basic differences of interpretation that existed between the French and the British, *differences that go to the heart of Chad's case*. Chad appears to overlook - just as France did - that Great Britain's interpretation of the 1899 Declaration and the 1919 Convention had, *prima facie*, as much validity and weight as that of France; and the fact that Great Britain had no interest in the territory concerned in Italy's protests gives the British view the added virtue of being unbiased and disinterested. Furthermore, the British note of 5 February was not just the view of the Foreign Office, as the passage quoted above seems to imply, but that of the British Government after careful study, as the record discussed by Libya in its Memorial demonstrates[261].

---

[257] *CM*, p. 190-191, para. 184.

[258] *CM*, Annex 101.

[259] *See*, *LM*, paras. 5.192-5.214.

[260] *CM*, pp. 190-191, para. 184. Emphasis added.

4.211 The CM summarizes the positions of Italy, Great Britain and France in the following manner[262]:

> "(L)a Grande Bretagne s'en tient à l'affirmation selon laquelle tant en 1899 qu'en 1919, il s'est agi de délimiter des zones d'influence et que c'est à l'Italie d'établir qu'elle a des droits acquis sur la région contestée, ce qu'elle ne peut faire ...[263]."

Comment: This is incorrect and misleading.

(i) *The British reply did not say that the 1899 Declaration concerned the delimitation of zones of influence; it adhered to the interpretation stated in 1899 by Lord Salisbury and consistently followed thereafter: Article 3 of the 1899 Declaration merely laid down a line limiting French territorial expansion. This was the "negative sense" of Article 3 to which Lord Salisbury had referred, in respect to territory north of 15°N latitude. It did not imply that the sovereignty of either State extended up to the line. As was pointed out earlier, it was not a delimitation of existing spheres of influence (or "partage" as the CM often calls it).*

(ii) *Great Britain's note added that the 1919 Convention did not change that situation, its sole effect being "either to define in greater detail or to modify the line in question". Thus, it may have altered the direction of the line but not its nature.*

(iii) *The British noted that the Italian Government acquiesced in the British interpretation.*

(iv) *The British note stated that any rights of sovereignty Italy might have could only have been inherited from the Ottoman Empire. It said nothing about Italy having to establish its rights in the area. Obviously, France had an equal burden to establish its rights, since no rights had been recognized by these agreements.*

(v) *The misleading aspect of the CM's summary is that Great Britain did not comment negatively on the merits of Italy's claim as the CM states in a purely gratuitous comment ("ce qu'elle ne peut faire").*

---

[261] See, LM, paras. 5.192-5.214.

[262] CM, pp. 190-191, para. 184, and Annex 101.

[263] CM, p. 193, para. 191.

(vi) *The CM's summary overlooks the basis on which the British and French decided to reconcile their entirely different interpretations - that the British Government understood that the French had additional particular reasons for regarding the Italian standpoint as untenable. This is a veiled reference to the 1900-1902 Accords, and brings out their crucial role in the French-Chadian position as to the boundary.*

- The French line of argument was "plus nuancée": - the 1899 Declaration "se bornait en effet à délimiter des zones d'influence dans une région que l'Italie avait, en 1902, expressément reconnue comme étant située au-delà des frontières de la Tripolitaine"; the 1919 Convention "consolide la ligne convenue vingt ans plus tôt en faisant une véritable frontière internationale et l'Italie, qui n'avait aucun droit particulier sur cette région avant que la Grande-Bretagne lui cède les siens, n'est pas fondée à en contester le tracé"[264].

Comment:

(i) *This summary is not of France's "argumentation" at the time but of Chad's line of argument now, and it even refers to an event occurring after 1923 - the 1934 Italo-Anglo-Egyptian Agreement.*

(ii) *There are two documents that set out France's official position, both notes verbales addressed to Italy, dated 8 October 1921 and 7 February 1923, the first of which was not annexed to the CM*[265]*. The first note has just been discussed in paragraphs 4.204-4.206, above.*

(iii) *The CM's summary of the French arguments bears no relation at all to the French Government's official reply of 7 February 1923, as will be shown below.*

- The Italian position "se borne à affirmer que le tracé de 1899, qu'elle admet, après une hésitation, avoir accepté en 1902, diffère de celui de 1919, amputant ainsi son territoire. Par ailleurs, elle reconnaît la présence effective de la France dans la région et, de ce fait, la transformation de la zone d'influence initiale en territoire colonial doté de frontières au sens propre du terme."

---

[264] CM, p. 193, para. 191.

[265] CM, Annex 102 and Production 19. Both notes were annexed to the LM as Exhibit 46 thereto and as Italian Archives Annex, p. 41, respectively.

Comment:

(i) *Italy's formal protest of 12 December 1921 did not mention at all the 1902 Accord nor the French presence in the "contested region". It did not refer in any way to French effectivités. It refused to recognize the 1919 Convention.*

(ii) *The Italian protest contained a mistake, for it used the following phrase to describe the 1899 line: "les frontières établies par la déclaration du 21 mars 1899". However, France and Great Britain had taken the official position that the 1899 line was not a boundary line; hence, the mistake could hardly be accepted as acquiescence in a position that had not been taken by either of the signatories of the Declaration or, indeed, by Chad in the CM. Italy's protest was not directed at the nature of the 1919 line, which Chad claims had been transformed into a boundary; it objected to the change in the line's direction.*

(iii) *The Italian note observed that any map that might have accompanied the 1899 Declaration could only have had "un caractère de démonstration et non de preuve". It thus rejected any suggestion that Italy had accepted in any way the map referred to in the 1902 Accord*[266].

4.212 The official French reply of 7 February 1923 described the line shown on the Non-Annexed Map as "provisoire" and admitted that it intersected 24°E "aux environs du 19ème degré" while the 1919 Convention line intersected at 19°30'N, adding:

> "Cette interprétation, si voisine du tracé provisoire de la carte de 1899, élargit légèrement la zone d'influence française au préjudice du domaine anglo-egyptien[267]."

The French note argued that the Article 3 line of the 1899 Declaration was not intended to be definitive for it concerned regions "pas encore entièrement explorées"; thus, the note went on to say, the 1919 modification of the 1899 line (as it was shown on the Non-Annexed Map) had respected the spirit of the

---

[266] At p. 190, para. 183, the CM completely distorts the meaning of this part of the note. Italy had not rejected the juridical value of maps; it had merely set out the normal rule as to the legal effect of maps, such as the Non-Annexed Map, and the even lower value to be ascribed to privately issued maps.

[267] LM, Italian Archives Annex, p. 44.

Declaration. Both of these arguments are adopted by Chad in the CM[268]. They are an admission that the two lines were not the same and that the line was modified in 1919. As noted earlier, this change occurred due to the greatly increased knowledge of the geography of the region by 1919.

4.213 The CM distorts the meaning of the French note of 8 February 1923 in claiming that France had contended there that "l'Italie ne saurait protester" against the southeast line because it had allegedly agreed in 1902 that Tripolitania's boundary was as shown on the map referred to in the 1902 Accord. France's point in the note was different: it sought to explain why France had not felt obliged to inform Italy of the 1919 Convention. For, as the French note said, France's only obligation under the 1902 Accord was not to extend its zone so as to cross the Tripolitanian frontier; and it even suggested that the undertaking in the 1899 Declaration not to exceed the lines described in Articles 2 and 3 - which had nothing to do with the Tripolitanian frontier - applied only to the Article 2 sector line, not the Article 3 southeast line, an interpretation clearly at odds with the British view. The French official response was not directed at Italy's right to protest but at France's obligation to have informed Italy about the 1919 discussions with Great Britain.

4.214 As the CM points out, Italy protested again to France on 27 March 1924[269] (it had already sent a similar protest to Great Britain on 28 February 1924)[270]. The CM says that the Italian protest ignored what France had said about the 1902 Accord and the map there referred to. This is not so; Italy took issue with what France contended the 1902 Accord meant, although its complaint focussed on the change in direction of the 1899 Declaration's southeast line, which Italy insisted was intended to be a strict southeast line terminating some 4° south of the end point of 19°30'N specified in the 1919 Convention. The Italian note disagreed with France's position that the only obligation France undertook in the 1902 Accord was not to exceed the Tripolitanian frontier as portrayed by the wavy, dashed line on the map. Italy asserted - for the first time - that, aside from the change in direction of the 1899 Declaration line, the 1919

---

[268] CM, p. 191, para. 185. The difference between the 1899 and 1919 lines is referred to as a "décalage minime".

[269] See, CM, p. 191, para. 187.

[270] These Italian protests were annexed to the LM, as British Archives Annex, pp. 178 and 186.

Convention was feared to have resulted in another change. Italy protested that instead of concerning zones of influence, as the 1899 Declaration did, the line described in the final paragraph of the 1919 Convention "est une véritable délimitation de frontière", especially "après l'exploitation et l'occupation des nouveaux territoires autant du côté de l'Angleterre que de celui de la France ...". What Italy was saying was that the spirit and intent of the two agreements were different: the change in 1919 had modified the status quo established in 1899 without Italy being informed. Italy was expressing a fear, not recognizing or acquiescing in a result, and it vigorously protested the 1919 Convention right up until 1935.

4.215 The CM interprets the Italian note as rejecting the British thesis as to the effect of the 1899 and 1919 agreements and siding with the French point of view[271]. This, of course, refers to the fundamental divergence in the views of the two Powers that had made the coordination of their replies to the initial 1921 Italian protest so difficult. However, the CM fails to mention the important event that took place in 1924 prompting Italy to again lodge a protest that year: the 1919 Convention line had been demarcated up to 19°30'N latitude, and this demarcated line had been agreed between Great Britain and France in the 1924 Protocol and Declaration. Quite correctly, Italy felt obliged to renew its protest. Whatever interpretation Great Britain may have given the 1919 Convention in 1921 in its 1923 note verbale to Italy, it would be hard to deny that the 1924 demarcation up to 19°30'N looked like an extension of the Article 2 sector north to that point, and hence that the boundary had been moved north. So Italy was compelled to protest again rather than to rely entirely on the principle res inter alios acta, under which even if the boundary as between the British and French had been moved north, any rights Italy might have could not have been affected. Italy's protest did not waive the application of that principle, in any event.

4.216 In its 1924 note to France, Italy certainly did not recognize "la présence effective de la France dans la région". Italy's reference to the exploitation and occupation of these territories was directed at both Great Britain and France, and as the CM points out, the British had by no means occupied this territory or claimed to have done so. The Italian note merely observed that important changes had occurred since 1899, when French forces had barely reached Lake Chad. The Italian note ended by refusing to "recognize the existence" of the 1919 Convention and by insisting on the "reconnaissement intégral de la situation établie par la Déclaration du 21 Mars 1899"[272]. This brings to mind the 1902 dispatch of Lord Lansdowne that became a part of the 1902 Anglo-Italian Accord, in which the Italian position was recorded to be that if the 1899 Declaration affected territorial rights north of 15°N latitude Italy would regard the status quo of the Mediterranean as being affected. Italy had been assured by the British that the Declaration had no such effect. After the 1924 Protocol and Declaration, Italy had every reason to fear that the status quo was threatened and to reject any such attempt undertaken behind its back.

---

[271] CM, p. 191, para. 187.

4.217 France's reply of 21 June 1924 to Italy's second formal protest asserted that Italy had no rights southeast of Tripolitania that could be invoked to contest the "frontière franco-britannique définitive"; and it repeated the French argument that the obligation it undertook in its 1902 Accord with Italy was limited to not exceeding the Tripolitanian limits and had nothing to do with the Article 3 southeast line. The French Government, however, had overlooked the fact that Italy's rights in the region were entirely different in 1919 from those it possessed in 1902. By virtue of the 1912 Treaty of Ouchy, Italy had inherited all the rights, titles and claims of the Ottoman Empire, as both Great Britain and France had several times explicitly and formally recognized. Whatever the meaning of the 1902 Accord might have been - whether, as France contended, it limited the French undertaking to not advancing beyond the notional Tripolitanian frontier as shown on the map, or whether, as Italy maintained, it also included an undertaking by France not to exceed the limits of French expansion established by the Article 3 southeast line - which Italy considered to be a true southeast line - Italy's status had changed. For it possessed the territorial rights inherited from the Ottoman Empire; and they appeared to have been placed in jeopardy by the 1919 Convention and the 1924 Protocol and Declaration.

4.218 The overriding factor was that Italy rejected the attempts it feared were reflected in the 1919 Convention to alter the status quo and to threaten Italy's territorial rights: by changing the direction of the Article 3 southeast line, which it considered France had promised in 1902 not to exceed; by altering the character of the line, from one concerned with zones of influence to a

---

[272] LM, British Archives Annex, p. 188.

"veritable boundary"; and by claiming that this boundary was opposable to Italy. In forcefully setting out its fears in order to support its protest, Italy certainly cannot be accused of having recognized the actions that had given rise to those fears.

SECTION 6. Chad's Contention that the 1919 Line Was Opposable to Italy.

4.219 In its Memorial, Libya noted the inconsistencies in the position France adopted in connection with the Italian protests. On the one hand, the French Government denied any obligation to have informed Italy of the 1919 Convention on the grounds that its undertaking in the 1902 Accord concerned only the Tripolitanian frontier[273]; on the other hand, France subsequently maintained that the Article 3 southeast line, modified in 1919, was opposable to Italy by virtue of the 1902 Accord[274]. Chad has adopted both French positions, and with them their inconsistencies. This problem of inconsistency first became apparent in the French *note verbale* of 5 March 1930, a document the *CM* neither refers to nor annexes[275]. In that *note*, the French Government informed Italy that in the 1902 Accord it considered Italy to have recognized not just the Tripolitanian frontier figuring on the map, but also the 1899 southeast line appearing there, as subsequently "interpreted" by the 1919 Convention.

4.220 The arguments now deployed by Chad to establish the opposability to Italy of the 1919 line follow this course[276]:

- At no time did Italy explicitly pose as successor to the Ottoman rights - no doubt because it would have been contrary to prior undertakings (referring particularly to the 1902 Accord);

---

[273] The French Government at first flirted with the notion that in the 1902 Accord Italy had renounced any Tripolitanian *hinterland* claim; but this was only in a 1922 dispatch to Great Britain; and in its official responses to Italy's protests, this argument did not appear. *See*, *LM*, para. 5.205, *et seq*. The *CM* has now made this renunciation argument a cornerstone of its case.

[274] *See*, *LM*, para. 5.270.

[275] *See*, *LM*, para. 5.269, *et seq*. The 5 March note was annexed to the *LM* as *Italian Archives Annex*, p. 70.

[276] *CM*, p. 193, para. 192, *et seq*.

Comment: *This is incorrect and irrelevant, as shown earlier*[277].

- Italy's position was entirely negative; and a State's protests may stand in the way of a situation becoming opposable to it, but they do not create rights in its favour;

Comment: *After 1912, Italy stood in the shoes of the Ottoman Empire; its inherited rights were recognized by Great Britain and France.*

- On its face, the 1919 Convention was not opposable to Italy;

Comment: *Correct.*

- Italy had no standing to question the Anglo-French agreements for Italy had not supplanted Great Britain in the effective control of the region to the northeast of the French possessions until long after 1919;

Comment: *This is mistaken:*

(i) *Great Britain did not have, and did not claim to have, effective control of the adjoining area lying north of the southeast line in 1919 or thereafter.*

(ii) *Italy's title was not based on its effectivités but on its inheritance from the Ottoman Empire. It had standing to question these agreements after the 1912 Treaty of Ouchy.*

- As a result of Admiral Canevaro's speech of 24 April 1899, Italy accepted the "partage" in the 1899 Declaration;

Comment: *Wrong in all respects as explained above*[278].

- This was confirmed repeatedly by Italy: by the 1900 Accord; by Signor Prinetti's speech in 1901; and even by the Italian protests themselves against the 1919 Convention, in which Italy struggled ("s'efforcer") to distinguish the 1919 line from the 1899 line;

---

[277] See, paras. 4.146-4.150, above.

[278] See, para. 4.80, et seq., above.

Comment: *The first two examples have already been refuted above[279]. The third example is astounding. It was no struggle at all to demonstrate that the 1899 and 1919 lines differed to the tune of 4° of latitude. The 1899 Line (true southeast), the line on the Non-Annexed Map (ending at 19°N), and the 1919 line (ending at 19°30'N) were on their face different lines. (Maps LC-M 19, 20 and 21)[280].*

- In fact, however, the 1919 Convention did not modify the 1899 Declaration's southeast line;

Comment: *The French Government repeatedly admitted the lines were different: one ending at 19°N latitude, the other at 19°30'N. Chad admits that the 1899 line was not a boundary line; but it contends the 1919 line was. This in itself would have been a major modification of the Declaration.*

- In the 1902 Accord, Signor Prinetti:

> "... se fonde non sur le texte de la Déclaration, mais sur la carte annexée dont le tracé ... est en tous points conforme à l'interprétation de 1919[281]."

Comment: *This has already been shown to be wrong. The 1902 Accord "se fonde" on the 1900 Accord. The southeast lines differed: 19°N and 19°30'N. In any event, the French Government, until its* note *of 5 March 1930, discussed above[282], had taken the position that the line referred to in 1902 was not the southeast line but the line depicting the Tripolitanian frontier.*

- The 1902 Accord had an even greater significance: Italy not only recognized the 1899 southeast line but also, by its recognition of the Tripolitanian frontier line as the limit of French expansion, indicated Italy's disinterest in the region and its recognition of it being within France's sphere of influence.

---

[279] See, paras. 4.85, et seq., and 4.90, et seq., above.

[280] Referred to in paras. 4.51, 4.72 and 4.162, respectively, above.

[281] CM, p. 194, para. 197.

[282] See, para. 4.219, above.

> *Comment: This is wrong and has been refuted above*[283]*. The 1902 Accord referred back to the 1900 Accord in order to clarify the unilateral French statement made there. Italy recognized nothing in either the 1900 or the 1902 Accords. Moreover, the wavy, dashed line encircling "Tripolitaine" on the Non-Annexed Map referred to in the 1902 Accord was not portrayed as a boundary on that map.*

4.221 The "snowball effect" of the argument, piling one layer of incorrect contention upon another as it rolls along, reaches its climax in the proposition that "les protestations italiennes n'avaient aucun fondement juridique" (referring to a map that apparently was to have been placed in the CM but was not)[284]. The CM argues that this is so, even if it is not accepted that Italy recognized the 1899 "partage", and even if it is granted that the 1919 Convention modified the 1899 line. For the Italian Government - the argument goes - washed its hands of the regions beyond the confines of the Tripolitanian boundary shown on the Non-Annexed Map, and thus declared itself to be indifferent as to how the British and French carved up between them all of these regions up to that wavy, dashed line. In other words, in 1902, Italy made a legally binding renunciation. It must be noted, straight off, that the map on which Chad relies portrayed no Tripolitanian boundary; it is only the tampered-with version of that map appearing as an "extrait" on page 162 of the CM that portrays such a boundary[285].

4.222 France, on the other hand, according to the CM, had by 1919 occupied the entire region in question and had it under effective French control; the 1919 Convention was an affirmation of that fact[286]. France's zone of influence, recognized by Great Britain (in 1899) and by Italy (in 1902), thus became "consolidated" as a French colonial possession - described by the CM as typical of the way in which a sphere of influence became transformed into a colonial title, citing M. F. Lindley. This transformation or consolidation theory[287], however, depends on three propositions, none of which the CM has proved. Great Britain denied that the 1899 Declaration recognized an existing French sphere of influence in 1899, and its Article 3 was carefully drafted to avoid any such thing, as the *travaux* show[288]. Italy recognized nothing at all in 1902. As will be demonstrated in Part V below, France had not come even close to establishing effective control throughout the Libya-Chad borderlands by 1919, quite aside from the absence of any legal right for French troops to be in any part of the borderlands at the time. Nevertheless, the *CM* claims to have a trump card to play: that Italy itself, in its *note verbale* of 27 March 1924, discussed above, considered that a "veritable boundary" had come into existence, as well as noting France's "effective occupation"[289]. Thus, that boundary became:

---

[283] See, para. 4.146, et seq., above.

[284] CM, p. 195, para. 199.

[285] See, para. 4.53, et seq., above, and Maps LC-M 25 and 26.

[286] CM, p. 195, para. 200.

[287] See, generally, Part VIII, below, for a discussion of this theory.

> "... opposable à ce pays qui, en 1902, a reconnu les droits de la France à s'établir dans cette zone et n'y est, pour sa part, nullement présente[290]."

4.223 Aside from the defects in this conclusion already noted, it ignores the fact that after 1902 the Ottoman Empire did indeed occupy and control the borderlands, in conjunction with the indigenous peoples under Senoussi leadership, and together they bitterly fought French attempts to invade these regions; and that until 1913, a *modus vivendi* existed under which the French respected a *de facto* line, north of which was territory under Ottoman control. By the 1912 Treaty of Ouchy, Italy inherited the Ottoman rights and titles; and it was only thereafter that French troops entered the area, destroying *zawiyas*, slaughtering the indigenous tribes and forcing the Senoussi headquarters to move north again to Koufra. These facts showing the Ottoman Empire's occupation and control over the borderlands are the *coup de grâce* to a theory that, in any event, rests on a series of incorrect and unproven propositions.

4.224 The *CM* continues, undeterred by all these problems, to reach its ultimate goal:

> "La triple reconnaissance italienne
>
> - de la validité de la Déclaration additionnelle de 1899,
> - de la frontière de la Tripolitaine indiquée par la carte annexée à cette Déclaration et,

---

[288] *See*, *LM*, para. 5.20, *et seq.*

[289] *See*, para. 4.214, *et seq.*, above.

[290] *CM*, p. 195, para. 201.

> - du droit pour la France d'étendre son influence jusqu'à cette frontière,
>
> empêche l'Italie de protester contre la modification de la limite prévue en 1899 et, a fortiori, contre sa confirmation[291]."

4.225 It has been mentioned several times that the second theory advanced in support of Chad's case is like a trapeze act: if one thing goes wrong, it all comes tumbling down. This is illustrated by Italy's so-called "triple recognition". For it is dependent on an interconnected and very fragile structure made up of some 10 or more elements. If any one is invalidated or even damaged, the argument collapses. It is particularly interesting to note how critical a role is played by the 1902 Accord and the map referred to therein. All three elements of Italy's alleged "triple recognition" arise initially from that Accord, as well as a fourth strand in Chad's argument, left out of the "triple recognition" - what Chad claims was Italy's renunciation of Ottoman rights and titles in the 1902 Accord. So the CM might have said Italy's "quadruple recognition", to be complete. If just one fact supporting this elaborately structured argument is wrong - take, for example, the assertions that in the 1902 Accord Italy accepted the 1899 line and that that line was the same as the 1919 Line (which the CM calls "la ligne convenue") - the entire argument falls apart[292]. Chad might argue this is not so, pointing to the fourth "recognition" of Italy, its alleged renunciation of Ottoman rights and titles. But this, too, relies on the 1902 Accord and on the proposition that the map referred to there portrayed the Tripolitanian boundary, which Italy therefore accepted in the Accord. But this proposition can only be sustained by accepting the "extract" of that map set out at page 162 of the CM, a distortion of the map, instead of the map itself, which portrayed no such boundary, as demonstrated by Maps LC-M 25 and 26 referred to at paragraph 4.53 above. Furthermore, it ignores entirely the consideration that, in 1902, Italy was wholly incapable of renouncing Ottoman rights and titles, Italy having no legal status in, or in relation to, Tripolitania at the time.

4.226 It may also be noted that when France recognized Italy's sovereignty in 1912 over this part of the Ottoman Empire, following the Treaty of Ouchy, it did so without the slightest reservation. In so doing, it revealed that in

---

[291] CM, p. 195, para. 202.

[292] See, para. 4.198, above.

1912 France either entertained no such repudiation theory or, if it did, France renounced it.

4.227 The CM, in setting out its three-part, or even four-part, theory of Italy's recognition, illustrates the point made in the Introduction to this Counter-Memorial. At the end of the day, Chad's case is based on a theory of acquiescence, recognition and estoppel: first, against Italy; and then, against Libya. It might appear to be absurd to contend that Italy had in effect acquiesced in the 1919 line when it so vigorously protested against and rejected the 1919 Convention; but the CM claims to have a ready answer: ignore the protest, Italy had no right to protest.

4.228 At the end of its discussion of the 1919 Convention, the CM attempts to dispose of the embarrassment to its various contentions created by the fact that Great Britain held an entirely different view of the meaning and effect of both the 1899 Declaration and the 1919 Convention, and had so informed the Ottoman Empire, Italy and even France. It will be recalled that the outcome of the discussions between the two Governments during 1922 over how to reconcile their irreconcilable views in order to respond to Italy's protest was to rely on the 1902 Accord. Great Britain, thus, could adhere to its previously stated (and correct) analysis of the situation created by the 1899 and 1919 agreements while leaving France to say whatever it wished - for Italy and France, (Great Britain was told) had a special relationship as a result of the 1902 Accord.

4.229 This, indeed, is the first reason the CM advances to differentiate between the French and British positions[293]. However, once again, Chad has overlooked the fact that Great Britain and Italy entered into a secret Accord in 1902 also, which in fact was signed before France's 1902 Accord with Italy[294]. In this prior Accord with Great Britain, Italy received explicit assurances that the 1899 Declaration neither meant nor had the effect that France was later to claim. The whole theory of Italy's so-called "triple (or quadruple) recognition" is invalidated by this 1902 Accord between Italy and Great Britain alone.

---

[293] See, CM, p. 196, para. 204.

[294] See, para. 4.96, above.

SECTION 7. Chad's Contention that in 1934, as Successor to Great Britain's Territorial Interests in the Region of the Sarra Triangle, Italy Became Bound by the 1919 Convention

4.230 The argument is advanced in the CM that, by virtue of the Italo-Anglo-Egyptian Accord of 20 July 1934, relating to the Sarra triangle, Italy had, as a matter of law, succeeded to British rights and obligations under earlier Anglo-French treaties "en vue de la délimitation du territoire cédé"[295]. This argument is manifestly unfounded.

4.231 A full account of the Anglo-Italian negotiations on the Sarra triangle (drawn from primary sources) is set out in the LM[296]. It is amply clear from this account, and indeed from the text of the 1934 exchange of notes itself, that this agreement did not involve any true "cession" of territory by Great Britain and Egypt, in right of the Anglo-Egyptian Sudan, to Italy. (As already shown, successive British Governments had, from 1899 onwards, taken the firm position that the southeast line in the 1899 Declaration as "interpreted" by the 1919 Convention, merely limited territorial aspirations and did not constitute a territorial boundary dividing territories under the sovereignty of Great Britain and France, respectively.) More specifically, Great Britain had assured Italy in the secret 1902 Accord between them that the 1899 Declaration simply laid down "a line to the east and west of which respectively [France and Great Britain] bound themselves not to acquire territory or political influence in the regions traversed by the said line, but that the Agreement in no way purported to deal with the rights of other Powers, and that, in particular, as regards the vilayet of Tripoli and the Mutessarifik of Benghazi, all such rights remain entirely unaffected by it[297]." Furthermore, Great Britain had consistently taken the position, vis-à-vis the Ottoman Empire, France and Italy, that, at least as regards territory to the north of 15°N latitude, the 1919 Declaration had been carefully worded in a negative sense so that, while placing a limit on the advance of France to the eastward, it did not recognize or purport to pass judgment on any other rights or claims[298].

---

[295] CM, p. 196, para. 207.

[296] See, LM, paras. 5.284-5.302.

[297] See, LM, para. 5.107, quoting from the British Declaration to Italy of 11 March 1902.

[298] See, LM, paras. 5.59, 5.60, 5.195, 5.202-5.203 and 5.212-5.213.

4.232 The British position was and remained based firmly on the consideration that the 1899 Declaration, as "interpreted" by the 1919 Convention, had not established a territorial boundary as between British and French possessions in this part of Africa, at least as regards territory to the north of 15°N latitude[299].

4.233 It is true that the 1924 Declaration confirming the Protocol of 10 January 1924, signed by the Boundary Commissioners appointed under paragraph 4 of the 1899 Declaration, established a line between the Anglo-Egyptian Sudan and French Equatorial Africa extending as far north as the intersection of 19°30'N latitude with 24°E longitude as a consequence of the 1919 Convention, which had "interpreted" the southeast line of Article 3 of the 1899 Declaration as taking a "southeasterly direction" so as to meet longitude 24°E at its point of intersection with latitude 19°30'N.

4.234 As has been discussed above[300], either the Boundary Commissioners appear to have exceeded their mandate under Article 4 of the 1899 Declaration in continuing the delimitation north of 15°N latitude; or the effect of the 1919 Convention was to extend the Article 2 sector of the 1899 Declaration north to 19°30'N and, hence, the line continuing north along 24°E longitude to that point became a boundary line. If, arguendo, the second alternative is accepted as correct, there is no doubt that that intersection could not be taken as an agreed tripoint between Great Britain, France and Italy. Italy had vigorously protested against the 1919 Convention to both France and Great Britain and had from 1921 onwards refused to recognize that Convention. In particular, Italy had, in its protest note to the Foreign Office of 18 December 1921, asserted that the line described in Article 3 of the 1899 Declaration was a strict southeast line intersecting 24°E just north of latitude 15°N, and that the 1919 Convention of 1919 had modified that line, not "interpreted" it, by fixing the point of intersection at 19°30'N latitude. Thus, Italy was specifically protesting against the fixing of the point of intersection at latitude 19°30'N.

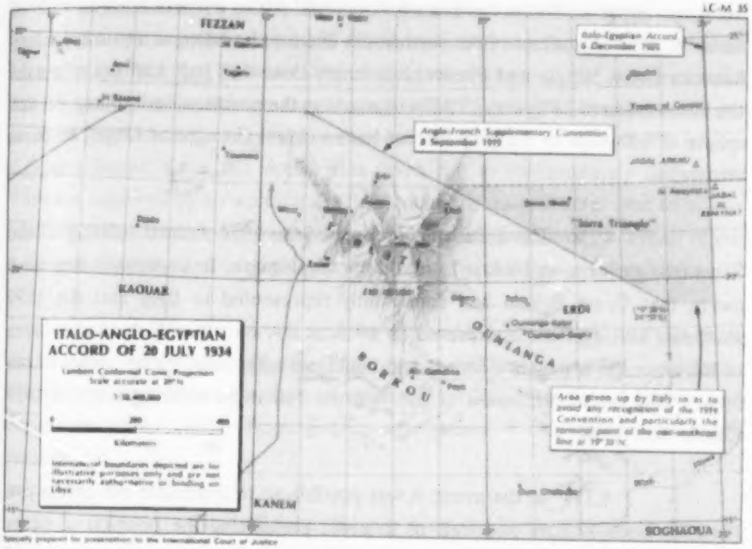
4.235 Accordingly, even if, despite what may well have been an excess of powers by the Boundary Commissioners in fixing a boundary between

---

[299] See, in particular, the second extract from Lord Curzon's note to the French Ambassador in London of 21 August 1922, cited at LM, para. 5.60.

[300] See, para. 4.203, et seq., above.

LC-M 35


FEZZAN
Italo-Egyptian Accord
6 December 1925
Anglo-French Supplementary Convention
8 September 1919
Tropic of Cancer
JABAL ARKANU
"Sarra Triangle"
KAOUAR
ERDI
OUNIANGA
BORKOU
ITALO-ANGLO-EGYPTIAN
ACCORD OF 20 JULY 1934
Lambert Conformal Conic Projection
Scale accurate at 20° N
1:10,400,000
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya
Area given up by Italy so as to avoid any recognition of the 1919 Convention and particularly the terminal point of the east-southeast line at 19° 30' N
KANEM
SOGHAOUA
25°
20°
15°

Specially prepared for presentation to the International Court of Justice

the Anglo-Egyptian Sudan and French Equatorial Africa north of latitude 15°N as far as 19°30'N, that sector of the north/south line is to be taken as a true boundary between Great Britain and France, it is amply clear that Italy had not accepted the intersection of 24°E with 19°30'N as marking the northern limit of any French sphere of influence to the prejudice of Italian claims (in right of Libya) to these territories.

4.236 The British negotiators of the 1934 Accord relating to the Sarra triangle were well aware of all these complexities. In particular, they were aware that Great Britain had consistently represented to Italy that the 1899 southeast line, even as "interpreted" in 1919, at the most merely divided spheres of influence (in a negative sense) and could not affect any Italian rights in the area. They were also aware of the vigorous Italian protests against the 1919 Convention.

4.237 In the event, it was possible so to formulate the agreement between Great Britain and Italy as to avoid prejudicing the position of either Italy, France or Great Britain. So far as Italy was concerned, the perceived need was not to utilise wording that could be construed as involving, directly or indirectly, Italian recognition of the 1919 Convention and particularly of the terminal point of the southeast line at 19°30'N. This was achieved by arranging that the step in the line (from 25°E to 24°E longitude) should be at 20°N latitude (rather than 19°30'N, which would have coincided with the terminal point of the 1919 line), and by specifying the southern limit of the line along the 24th meridian as "its junction with the frontier of French possessions" (Map LC-M 35). The use of this vague and indeterminate language was designed not to prejudice the then ongoing Franco-Italian negotiations on the southern boundary of Libya[301].

4.238 So far as France was concerned, the perceived need was not to put in issue the "interpretation" which the 1919 Convention had given to the southeast line; and to refrain from basing any concessions to Italy on geographical, economic, political or historical arguments which could strengthen Italian claims against French positions in Central Africa. These desiderata were brought by France to the attention of Great Britain at an early stage of the Anglo-

---

[301] See, LM, paras. 5.247-5 283. The extension of the line of 22°N latitude westward so as to form the "Sarra Triangle" was entirely hypothetical, for west of 25°E longitude this line had no status as a boundary.

Italian negotiations[302]. The British negotiators had them firmly in mind throughout the negotiations; and it will be seen that the final text of the 1934 Accord respects them. So far as Great Britain was concerned, the perceived need was to avoid any implication that the agreement relating to the Sarra triangle involved the "cession" of British (or part-British) territory in right of the Anglo-Egyptian Sudan, since this would have given rise to Parliamentary difficulties. This was achieved by so wording the final text as to make it clear that what was involved, on the British-Egyptian side, was a simple renunciation, on behalf of the Sudan, of all claims to territory to the west and north of the agreed frontier line.

4.239 The careful wording of the 1934 Accord, particularly when read in the light of the *travaux préparatoires* of that agreement, sufficiently dispels any argument that Italy thereafter succeeded to British rights and obligations under earlier Anglo-French agreements, if only for the following reasons:

- Great Britain did *not* cede the Sarra triangle to Italy by virtue of the 1934 Accord. Neither Great Britain nor the Sudan had ever asserted any claim to title over the territory comprised within the Sarra triangle. Great Britain might have had a *potential* inchoate claim to title over that territory in right of the Sudan by virtue of the 1899 Declaration as "interpreted" in 1919, and it was that *potential* inchoate claim (and no more) that was renounced in 1934 (*nemo dat quod non habet*);

- Italy was careful to ensure that the text of the 1934 Accord in no way prejudiced the Italian position of non-recognition of the 1919 Convention;

- If France had really thought that by concluding this Accord, Italy had succeeded to British rights and obligations under earlier Anglo-French treaties, it is astonishing that France did not argue, in the then ongoing negotiations with Italy over the southern border of Libya, that Italy was now precluded from contesting the 1919 "interpretation" of the

---

[302] *See*, *LM*, para. 5.294.

> 1899 southeast line. Instead, within six months of the conclusion of the Sarra triangle Accord, France had concluded with Italy the 1935 Treaty establishing, for the first time, a boundary between Libya and French Equatorial Africa departing materially from the 1899 line as "interpreted" in 1919. It is submitted that the conclusion by France of the 1935 Treaty estops Chad from maintaining that, by concluding with Great Britain the 1934 Accord relating to the Sarra triangle, Italy had accepted the 1919 Convention.

4.240 If this were not enough, there remains the more basic question whether the régime established by an agreement such as that constituted by Article 3 of the 1899 Declaration as "interpreted" in 1919, falls within the category of "boundary régimes" or "other territorial régimes" to which the rules set out in Articles 11 or 12 of the 1978 Vienna Convention on Succession of States in respect of Treaties might apply. Even Chad concedes that, at least initially, the 1899 Declaration did not delimit territories over which France and Great Britain already exercised territorial sovereignty; the CM states that the Declaration went no further than effecting a division of spheres of influence that the two parties mutually recognized[303]. So also Chad admits that a treaty establishing a sphere of influence was insufficient to establish a "colonial title", which could only be acquired by the conclusion of agreements with local chieftains or by the effective and continuous exercise of acts of sovereignty[304]. So there is ample reason for regarding the 1899 Declaration, insofar as it concerned areas north of 15°, as a "political" understanding, an agreement over the extent of the political aspirations of the two parties, rather than a treaty establishing a boundary or territorial régime.

---

[303] See, e.g., CM, p. 148, para. 23. In this, the CM is wrong insofar as Article 3 is concerned: Article 3 only indicated a line limiting French territorial expansion toward the Nile.

[304] CM, p. 61, para. 55. In this regard, a 1934 opinion of one of the Legal Advisers to the Foreign Office in connection with the negotiations concerning the Anglo-Saudi frontier is of interest (Exhibit LC-M 12, hereto). In it, Mr. Beckett (Second Legal Adviser) made these remarks:

> "Spheres of influence in international law, whatever their political significance, mean nothing at all. If a state admits it has not sovereignty over a territory, but only claims a sphere of influence over it, then apart from treaty obligations binding particular powers not to enter the sphere of influence, etc. legally any other power can go there and take steps to make itself sovereign."

In the same opinion, Mr. Beckett goes on to say:

> "Sovereignty over territory cannot consist in a mere right to keep other states out when the soi disant sovereign exercises no authority whatsoever there. If this is the position, then even if the soi disant sovereign had originally a perfectly sound title, he will lose it if another state enters the territory and de facto exercises authority there for a sufficient period, and thus acquires a prescriptive right."

4.241 From the British travaux of the 1899 Declaration, it is amply clear that the line described in Article 3 of that Declaration was viewed simply as a line limiting the political aspirations of France as regards future acquisitions of territory and was, in any event, res inter alios acta as far as Powers other than France or Great Britain were concerned. In the 1899 exchange of notes between Great Britain and Germany, the principle of res inter alios acta was affirmed by the German Government as applying to the Declaration[305]; and this was not contested by Great Britain. This also appears to be the position of Chad, at least in principle[306]. It is a hall-mark of a true territorial, or boundary, régime that it becomes valid erga omnes - quite the reverse of a political arrangement that is res inter alios acta.

4.242 In the light of these considerations, it may be concluded that the 1899 Declaration only had a legal effect inter partes (that is to say, between France and Great Britain); that the final paragraph of the 1919 Convention, which purported to "interpret" paragraph 3 of the 1899 Declaration, similarly only had a legal effect inter partes; and that neither of these instruments established, or purported to establish, a "boundary régime" or "other territorial régime" within the meaning of customary law or the rules set out in Articles 11 or 12 of the 1978 Vienna Convention. Accordingly, and as a matter of international law, Italy could not, by reason only of concluding with Great Britain the 1934 Accord relating to the Sarra triangle, have "succeeded" to British obligations under earlier Anglo-French treaties that did no more than divide spheres of influence in the region (that is to say, the 1899 Declaration as "interpreted" by the 1919 Convention), these obligations, by the very content of the instruments in which they were embodied, existing only inter partes.

---

[305] See, LM, paras. 5.56-5.57.

[306] See, CM, p. 80, para. 111.

CHAPTER VII. THE 1919 FRANCO-ITALIAN ACCORD (12 SEPTEMBER)

SECTION 1. Background and Text

4.243 The CM begins its discussion of this Accord with a touch of sarcasm:

> "Quelles qu'aient pu être les réticences de l'Italie à l'encontre de la Convention supplémentaire du 8 septembre 1919, celle-ci n'en a pas moins conclu avec la France, quatre jours plus tard, dans le cadre des négociations de paix de Versailles, un accord ... [referring to the 12 September Accord also on the 1955 Treaty Annex I list][307]."

This is quite uncalled for; in fact, the irony of the situation is quite the reverse. How could the French Government, in the light of its obligations to Italy under Article 13 of the 1915 Treaty of London, have clandestinely entered into the 8 September Convention with Great Britain, directly and adversely affecting Italian interests in the Tripolitanian hinterland inherited from the Ottoman Empire in 1912 - ten years after the 1902 Franco-Italian Accord on which the CM confers a seminal role - without the slightest disclosure about the Convention to Italy four days later, on the occasion of the signing of the 12 September Accord concerning the western boundary of Tripolitania? Both agreements were signed on behalf of France by its Foreign Minister, M. Pichon. The passage quoted above states that the 12 September Accord fell within the scope of the post-World War I Peace Congress. So did the 8 September Convention: the source attributed to the map annexed to it was the "Geographical Section, Peace Congress, No. 224"[308].

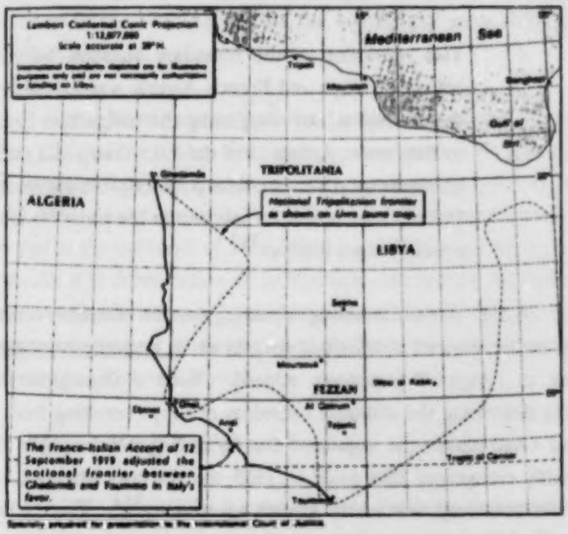
---

[307] CM, p. 197, para. 210.

[308] See, Map LC-M 30 referred to at para. 4.174, above, and LM, Map No. 60, at para. 5.176.

4.244 The analysis of the 12 September Accord[309] in Libya's Memorial brings out several points in addition to the one just made[310]:

LC-44 36


Lambert Conformal Conic Projection
1:12,877,000
Scale accurate at 28°N.
Mediterranean Sea
Tripoli
Misurata
Benghazi
Gulf of Sirt
TRIPOLITANIA
Ghadamès
ALGERIA
National Tripolitanian frontier as shown on Livre Jaune map.
LIBYA
Sebha
Mourzouk
FEZZAN
Wau el Kebir
Al Qatrun
Ghat
Djanet
Tropic of Cancer
Toummo
The Franco-Italian Accord of 12 September 1919 adjusted the notional frontier between Ghadamès and Toummo in Italy's favor.

Specially prepared for presentation to the International Court of Justice

---

[309] Annex I of the 1955 Treaty refers to the Accord in a slightly derisive way: as "l'arrangement franco-italien du 12 septembre 1919", as if it were not to be taken too seriously: it was an "arrangement", not a "convention" or "accord". The French title reflects the fact that France modified the Ghat-Toummo sector of the boundary, agreed in 1919, in Annex I of the 1955 Treaty; and was planning to do so in respect to the Ghadamès-Ghat sector, which was accomplished by the 1956 Agreement insisted upon by France as a condition of ratifying the 1955 Treaty.

[310] LM, paras. 5.168-5.173 and Maps Nos. 58 and 59. The text of the Accord appears at LM, International Accords and Agreements Annex, No. 18.

- The Accord established, for the first time, the western boundary of Libya as far south as Toummo, modifying the notional frontier shown on the Non-Annexed Map (Map LC-M 36)[311];

- The Accord delimited an agreed territorial boundary and called for its "vérification sur les lieux";

- This resolution of the boundary question between Italy's colony of Libya and French Algeria was expressly noted in the Accord as not completing the obligations France owed to Italy under Article 13 of the 1915 Treaty of London ("tout en réservant d'autres points pour un prochain examen"); the Italian Government so asserted at the time[312]; and the CM acknowledges this fact[313].

4.245 It is worth noting in passing that the boundary resulting from the 12 September Accord is described therein as "la nouvelle frontière entre la Tripolitaine et l'Algérie" (emphasis added). Such a description was later employed in describing the southern boundary of Libya resulting from the 1935 Treaty; and Chad makes the argument that by calling it a "nouvelle frontière", Italy explicitly recognized that prior to 1935 the territory affected, under the supposed old boundary, was under French sovereignty[314]. The 12 September Accord confirms that the use of the words "nouvelle frontière" does not lead to such a conclusion, and that such a description does not necessarily imply that a prior conventional boundary existed. What was modified in the 12 September Accord was the western side of the Tripolitanian frontier depicted on the map (the Non-Annexed Map) referred to in the 1902 Franco-Italian Accord. This was not an agreed or conventional boundary - it was a sketch of where the frontier was generally considered to lie, a notional frontier. In 1902, Italy had no territorial rights in respect to Tripolitania, which was under uncontested Ottoman sovereignty. Thus, Italy could not have fixed that boundary with France in the 1902 Accord. The wavy, dashed line on the map served as a convenient illustration of what M. Barrère meant in his unilateral declaration to Signor Visconti-Venosta in 1900 as to the meaning of the 1899 Declaration[315]. The phrase "nouvelle frontière" was a short-hand way to describe a new boundary in the sense that no agreed boundary had existed prior thereto. The Non-Annexed Map referred to in the 1902 Accord did not identify the wavy, dashed line as a boundary[316].

---

[311] As a result, Ghadamès, Ghat, the oases of Fehout and El-Birkat, Anai and Toummo and the principal caravan route between Ghadamès and Ghat, as well as the direct communication lines between Ghat and Toummo, were all recognized as within Libyan territory.

[312] See, for example, Foreign Minister Tittoni's speech of 27 September 1919 to the Italian Parliament discussed at para. 4.192, et seq., above.

[313] See, CM, p. 199, para. 220.

[314] See, para. 6.20, below.

4.246 In its account of the background of the 12 September Accord, the CM makes a slip that must be corrected. In referring to the agreement between Italy and France in 1914 to convene in order to resolve the question of Libya's boundaries with France's possessions - negotiations that never took place due to the outbreak of World War I -, the CM uses the expression "en vue de procéder à la démarcation de la frontière orientale de la Libye"[317]. The appropriate word is "délimitation" not "démarcation": there was at the time, until the 12 September Accord was signed and ratified, no delimited international boundary between Libya and Algeria.

(a) Marin Reports

4.247 Admittedly, a contrary view had been expressed in French circles, notably by M. Louis Marin. In his report to the French Chambre des Députés on 22 December 1913, there appears what seems to have been the first public utterance of what was to become France's theory as to the effect of the 1902 Franco-Italian Accord. In mentioning the preparations being made to delimit the boundaries between Libya, on the one hand, and Tunisia, the A.O.F. and the A.E.F., on the other hand, M. Marin asserted that Italy had:

---

[315] It will be recalled that the 1899 Declaration omitted any reference to Tripolitania. It was this omission that gave rise to M. Barrère's explanatory declaration in 1900, which in the event was sufficiently ambiguous as to call for a clarification in 1902, as to just what M. Barrère meant when he referred to the "Vilayet of Tripoli". The map served this purpose; but it was not intended to be, and could have not been, part of an international agreement as to the Tripolitanian boundary.

[316] See, para. 4.53, et seq., above.

[317] CM, p. 198, para. 214. The quoted passage contains a second slip as well: clearly the CM meant to refer to Libya's western boundary (frontière occidentale).

> "... reconnu les limites des zones d'influence française et italienne, telles qu'elles ont été indiquées sur la carte annexée à la déclaration franco-britannique du 21 mars 1899 relative au centre africain[318]."

Thus, he continued:

> "Il ne s'agit donc [que] de marquer sur le terrain la frontière qui a été ainsi fixée dans ses grandes lignes ... ."

4.248 M. Marin could only have been talking of the notional Tripolitanian frontier as shown on the Non-Annexed Map down to Toummo; nevertheless, his analysis was incorrect because Italy in 1902 not only did not agree to any kind of boundary - none was shown in respect of Tripolitania on the map referred to - but also had no status to do so, since the territory was subject to Ottoman sovereignty[319]. In the following year, M. Marin again submitted a report to the Chambre des Députés (on 12 July 1914), this time directed at the delimitation operations contemplated for the boundary between Libya and Algeria, the A.O.F. and the A.E.F.[320]. His report started out this way:

> "Messieurs, dès le mois de juin 1913, le Gouvernement italien demandait au Gouvernement français de vouloir bien hâter la réunion d'une commission de délimitation ayant pour but de fixer, d'une façon précise, les frontières entre la Libye et les possessions françaises. A la suite des pourparlers qui se sont poursuivis depuis lors entre le Gouvernement français et le Gouvernement italien, la date du commencement des opérations a été fixée au mois de décembre 1914, et il a été décidé que les deux chefs de mission se réuniraient à Berne, le 20 juillet 1914, à l'effet d'étudier la préparation technique des travaux."

---

[318] CM, Annex 335. See, also, CM, p. 183, para. 152.

[319] In the same report, M. Marin mentioned Borkou and Tibesti, but not in relation to the 1902 Accord. What he said was the following:

> "Les Turcs occupaient certains points du Borkou et du Tibesti. A la suite du traité de Lausanne, ils ont déclaré qu'ils abandonnaient toute prétention sur ce pays. Le Borkou et le Tibesti se trouvant dans la zone d'influence française, d'après les indications de la carte annexée à la déclaration franco-anglaise du 21 mars 1899, leur occupation par les troupes françaises présentera, le moment venu, le caractère d'une simple opération de police."

Of course, M. Marin made the mistake of overlooking the effect of the Treaty of Ouchy by which Italy inherited from the Ottoman Empire its territorial rights and titles.

[320] CM, Annex 336.

He then went further back in history, referring to the negotiations that had been planned in 1911 to be undertaken with the Ottoman Empire:

> "En occupant la Tripolitaine, l'Italie a succédé à la Turquie et a recueilli l'héritage des questions qui intéressent la détermination des frontières communes à nos colonies et à la jeune colonie italienne.
>
> Toutefois, avant que la guerre italo-turque n'ait été déclarée, les gouvernements français et turc, après avoir envoyé des délégués sur la frontière tuniso-tripolitaine, avaient signé à Tripoli, le 19 mai 1910, un accord fixant définitivement la frontière dans cette région.
>
> Les négociations engagées, à cette époque, laissaient même espérer le règlement rapide des questions concernant l'Algérie, l'Afrique occidentale française et l'Afrique équatoriale française, d'une part, et la Tripolitaine, d'autre part, à tel point qu'une commission devait se réunir à Tripoli le 11 décembre 1911. Les événements que vous connaissez remirent tout en question.
>
> Cependant, l'Italie avait adhéré à la déclaration du 21 mars 1899, additionnelle à la convention franco-anglaise du 14 juin 1898, qui, par la carte annexée à cet accord, fixe ne varietur, mais aussi théoriquement, les zones d'influence respectives des puissances européennes dans l'Afrique du Nord."

4.249 This interesting bit of history reveals, as the LM describes, that negotiations to delimit Libya's boundaries were planned in 1911 between France and the Ottoman Empire, but were cancelled following the 1912 Treaty of Ouchy. M. Marin's report concerned the rescheduled negotiations, this time with Italy; but in the case of Italy, he advanced the view that Italy had "adhered" to the 1899 Declaration and that the map "annexed" to the Declaration "fixed" the zones of influence of the European Powers, including Italy - an incorrect interpretation of the effect of the 1902 Accord, but perhaps useful as a bargaining position with the forthcoming negotiations with Italy in sight. The more significant point is that M. Marin was only talking about Libya's western frontier as far as Toummo. This was the same sector that Foreign Minister Poincaré had wanted to have fixed back in 1912[321]. M. Marin did not deal with the southern boundary at all.

4.250 The Marin report went on to describe the western sector of the boundary in detail: "telle qu'elle est définie par les accords antérieurs ...". This was certainly presumptuous, for Italy had not agreed to any western boundary of Libya - the 1902 Accord merely clarified, by reference to a map, the unilateral declaration of M. Barrère in 1900 as to what the limits of France's expansion were between France's possessions to the west of Tripolitania and Tripolitania itself. M. Marin's description ended at Toummo, however, making it once again clear that the 1902 Accord only concerned that sector of Libya's frontier. As to that frontier, M. Marin outlined France's view as to the limited task of the delimitation commission scheduled to meet in Berne on 20 July 1914, only a week after his report:

---

[321] See, para. 4.150, et seq., above.

> "Il ne s'agit pas pour les commissions de délimitation d'engager des pourparlers diplomatiques, mais de matérialiser sur le terrain une frontière déjà existante. Sans doute, toute théorique et tracée à une époque où les nécessités géographiques et les intérêts locaux étaient complètement ignorés dans les régions qu'elle traverse, cette frontière devra subir certaines modifications; mais, du moins, ces dernières seront elles très peu importantes[322]."

4.251 It is certain that Italy would not have agreed with the suggestion that the boundary had already been decided in earlier agreements and merely required to be demarcated, for that was not the case. The outbreak of World War I caused the meeting to be cancelled. But it should be noted that both the Ottomans, in 1911, and the Italians, in 1914, had in mind to delimit the entire Libyan boundary. France, on the other hand, at least in 1914, was only concerned at the time with fixing Libya's western boundary. The 1915 Treaty of London was subsequently entered into to coax Italy to enter the war on the side of Great Britain and France. At the meetings of the Colonial Commission in 1919, France agreed to modify what it considered to be the western frontier of Tripolitania - shown by the wavy, dashed line on the Non-Annexed Map - under the provisions of Article 13 of the Treaty of London, events which both the LM and the CM cover[323]. This led to the Accord of 12 September 1919. But France's agreement was to delimit this boundary for the first time, not to rectify an existing conventional boundary - for there was none south of Ghadamès.

(b) An Implementation of Article 13 of the 1915 Treaty of London

4.252 The report of the Colonial Commission referred to the proposal made by France as a "rectification" of Libya's western boundary[324]; and this certainly was the way the French regarded its proposal and the resulting effect of the 12 September Accord that carried out the French proposal. However, such a conclusion assumed that the wavy, dashed line on the map was an agreed boundary between Italy and France, which it was not and could not have been, as pointed out above, contrary to the distorted version of the map appearing as an "extrait" at page 162 of the CM[325]. As Map LC-M 36 shows, the effect of the 12 September Accord was to modify the western side of the frontier of Tripolitania as shown on the Non-Annexed Map in favour of Italy. However, the text of the 12 September Accord did not refer to a pre-existing boundary; nor did it state that the "nouvelle frontière" was a modification or rectification of an existing boundary. It provided that certain designated oases and caravan routes "sont également attribuées à l'Italie", and that from Ghat to Toummo:

---

[322] CM, Annex 336.

[323] See LM, paras. 5.150-5.167; CM, pp. 198-199.

[324] See, LM, para. 5.165.

> "... la frontière sera déterminée d'après la crête des montagnes qui s'étendent entre ces deux localités, en attribuant toutefois à l'Italie les lignes de communications directes entre ces mêmes localités[326]."

4.253 As was pointed out in the LM, the fact that the 12 September Accord was in implementation of Article 13 of the Treaty of London did not imply that it concerned the modification of a pre-existing boundary; Article 13 provided for the settlement in Italy's favour of "questions relative to the frontiers" of the Italian colonies and the neighbouring French and British colonies. This might concern the attribution of territory to Italy or modifications or rectifications of boundaries, depending upon whether the question being settled related to a frontier where no conventional boundary did exist or to an existing conventional boundary[327].

SECTION 2. Chad's Contentions as to the 12 September Accord's Significance

4.254 The CM finds in the 12 September Accord two points of special significance, even though the boundary agreed under the Accord stopped at Toummo and, thus, did not concern territory falling within the Libya-Chad borderlands. First, it is argued that this Accord confirmed the western segment of the boundary that Chad claims in its Submissions to lie between the intersection

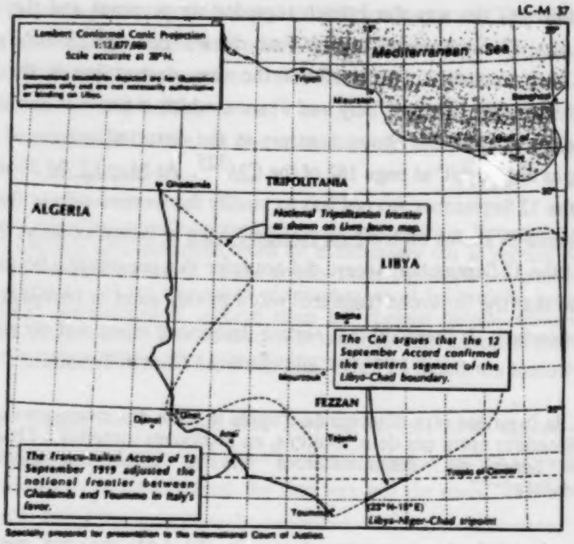
---

[325] See, para. 4.53, above.

[326] LM, International Accords and Agreements Annex, No. 18.

[327] See, e.g., LM, paras. 5.151-5.156, 5.169 and 5.172.

LC-M 37


Lambert Conformal Conic Projection
1:12,877,000
Scale accurate at 28°N.
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.
Mediterranean Sea
Tripoli
Misurata
Benghazi
Gulf of Sirte
TRIPOLITANIA
Ghadamis
ALGERIA
LIBYA
Sebha
Mourzouk
FEZZAN
Djanet
Ghat
Arrat
Tejerhi
Toummo
Tropic of Cancer
(23°N-15°E)
Libya-Niger-Chad tripoint

National Tripolitanian frontier as shown on Livre Jaune map.

The CM argues that the 12 September Accord confirmed the western segment of the Libya-Chad boundary.

The Franco-Italian Accord of 12 September 1919 adjusted the national frontier between Ghadamis and Toummo in Italy's favor.

Specially prepared for presentation to the International Court of Justice.

of the Tropic of Cancer and 16°E along a straight line connecting that point with Toummo (although stopping at what Chad regards as the Libya - Niger - Chad tripoint) (Map LC-M 37). The CM reaches this conclusion by following this unfounded line of argument[328]:

- The 12 September 1919 Accord boundary ended at Toummo; and this oasis was also the starting point of the 1935 Treaty line;

Comment: True.

- This "fixation à Toummo ... constitue la confirmation de l'accord intervenu sur ce point entre la France et l'Italie en 1902 ...";

Comment: The 1902 Accord contained no agreement concerning Toummo.

- The map referred to in the 1902 Accord (the Non-Annexed Map) indicated the Tripolitanian boundary as it was accepted by Italy and France at the time;

Comment: Italy did not and could not have agreed any boundary for Tripolitania in 1902, for it was Ottoman territory; and the Non-Annexed Map indicated no Tripolitanian boundary, just a wavy, dashed line, not identified on the map's legend as a boundary of any kind, which represented, notionally, what was commonly regarded at the time to be the Tripolitanian frontier[329].

- Italy "a constamment accepté" the southeast line of Article 3 of the 1899 Declaration and, hence, its starting point at the Tropic of Cancer;

Comment: Totally false.

- Hence, Italy never contested the two extremities of the western part of Chad's northern boundary and:

---

[328] See, CM, pp. 200-201, paras. 222-229.

[329] See, para. 4.53, et seq., above.

> "... l'on peut en déduire logiquement que cette portion est constituée par une ligne droite liant ces deux points, ce que confirme le tracé porté sur la carte acceptée par l'Italie en 1902[330]";

> *Comment: Aside from its other defects, the assertion contains the truly remarkable statement that Italy accepted the Non-Annexed Map.*

In reaching this conclusion, the CM is not deterred by the fact that Toummo lies well to the west of the northwest corner of Chad's putative boundary (Map LC-M 37). A glance at the famous map on which this entire argument depends reveals that the wavy, dashed line does not in fact pass through Toummo at all. The entire argument is constructed out of a series of assertions, none of which is accurate or correct; it is artificially contrived and has no validity at all. So the second part of the line described in Chad's Submissions - south and west of the intersection of 16°E longitude and the Tropic of Cancer - has no support at all.

4.255 The CM's second point regarding the special significance of the 12 September Accord - what it describes in comparison to the first point as its "portée plus vaste" - is expressed this way:

> "Il montre en effet, a contrario mais clairement que, au moment de sa conclusion, l'Italie acceptait en droit, le statu quo territorial, même si elle le contestait politiquement[331]."

In this way, the CM claims to find a second reason - derived from the 12 September Accord - why Italy's vehement protests against the 8 September Convention should be ignored. The first reason, already discussed, is that by the 1902 Accord Italy supposedly forfeited any legal right to object to the 1919 line; the second reason is that the Accord of 12 September 1919 confirmed this, for under that Accord, Chad contends, Italy accepted the territorial status quo.

4.256 Bearing in mind the fact, already mentioned, that the 12 September Accord boundary lay outside the area in dispute here between Libya and Chad, it is revealing to examine the sequence of propositions advanced in the CM leading to this second conclusion[332]:

---

[330] CM, p. 201, para. 227. Emphasis added.

[331] CM, p. 201, para. 230.

[332] CM, pp. 201-203, paras. 230-236.

- The 12 September Accord was a consequence of France's commitment to Italy under Article 13 of the 1915 Treaty of London;

Comment: Correct; but that does not mean it involved a modification of any existing boundary - and hence a "cession" - for there was no such conventional boundary.

- The Accord expressly recognized that the concession to Italy it provided did not exhaust Italy's "créance" against France under Article 13;

Comment: Correct.

- "Bien entendu", France's failure to fulfil its Article 13 obligations gave Libya no right to claim this "créance" that had been owed Italy: (i) the promised "rectification" could have been made in other areas of Africa, not just in Libya's southern boundary; (ii) in Article 23 of the 1947 Peace Treaty, Italy renounced all rights and titles to its African colonial possessions;

Comment: Both arguments are refuted in Part VI below where the 1935 Treaty is discussed.

- In 1919, Italy based its territorial claims to the Tripolitanian hinterland on Article 13 rather than on legal grounds, using words like "céder" and "cession" that clearly implied the recognition of French sovereignty; legal arguments to sustain Italy's claim did not start to appear until 1921; the circumstances in which the 8 September Accord was concluded "établissent que l'Italie n'avait, à l'époque, aucun doute sur la légitimité de la présence française dans l'ensemble du B.E.T.[333]";

Comment: The CM wrongly contends that claims made under Article 13 had no legal basis and were only politically inspired, a point extensively dealt with in the LM[334]. In Article 10 of the Treaty of

---

[333] CM, pp. 202-203, paras. 234-236.

[334] See, fn. 308, above, for references to the LM.

> *London, Great Britain and France explicitly recognized the rights Italy inherited from the Ottoman Empire; Italy had no obligation to couch its territorial claims in legal language; and Article 13 embraced claims to resolve boundary questions whatever their basis. The CM fails totally to show how an Article 13 claim, satisfied with respect to territory outside the Libya-Chad borderlands in the Accord of 12 September 1919, could be construed as the acknowledgment of France's sovereignty over the borderlands - what the CM calls "l'ensemble du B.E.T.". The CM's arguments based on Italy's use of terms such as "céder" and "cession" are dealt with below in the context of the 1935 Treaty*[335].

4.257 In its conclusions, the CM comments that the 12 September Accord, though referred to in Annex I of the 1955 Treaty, was not really a "texte de référence" since the resulting boundary did not concern the Libya-Chad borderlands in dispute here. This overlooks the fact that the 1955 Treaty was between France and Libya, and the 12 September Accord fixed what to France was the most important part of that boundary - the Algerian sector. Yet France sought to modify this boundary in Annex I of the 1955 Treaty and in the subsequent 1956 Agreement. The CM also avoids revealing whether the Accord of 12 September 1919 was, in its view, "en vigueur" in 1951 in consideration of the fact that it had not been notified to Italy under Article 44 of the 1947 Peace Treaty.

CHAPTER VIII. CONCLUSIONS

4.258 The second theory of Chad, as set out in the conclusions to the CM, is, first, that the line described in Article 3 of the 1899 Declaration, agreed between Great Britain and France, was accepted by Italy in 1902; second, that this line was transformed into an international boundary as a result of French effectivités by 1919; third, that the line resulting from the 1919 "interpretation" of the Article 3 line is the exact same line, only expressed in words, just as this same line was shown graphically on the map annexed (to all intents and purposes) to the 1899 Declaration; and fourth, that this line was thus opposable to Italy (and now to Libya) as confirmed by Italy in signing the 1935 Treaty.

4.259 Chad's second theory is unfounded for the following reasons, inter alia:

---

[335] See, para. 6.30, et seq., below.

- The line described in Article 3 of the 1899 Declaration was intended to be a true southeast line, as the travaux and the geographical information on maps available to the negotiators demonstrate; this is confirmed by subsequent official British maps;

- The Article 3 line was intended to meet the end point of the Article 2 sector, which in 1899 had not yet been delimited, a point that would have been only slightly north of 15°N latitude, at the approximate latitude of Wadi Howa (15°45'N), hence an almost true southeast line (which would intersect 24°E at 15°35'N);

- The Article 3 line, agreed between Great Britain and France in 1899, did not become opposable to Italy by virtue of the 1902 Franco-Italian Accord: that line was not in any way relevant to that Accord; the only relevant reference in the Accord was to the notional Tripolitanian frontier as shown on the Non-Annexed Map, a map that was only intended to be illustrative and whose accuracy was never accepted by Great Britain;

- The Tripolitanian frontier so shown (as a wavy, dashed line) was not an agreed boundary and the Non-Annexed Map did not so indicate;

- The Article 3 southeast line was directly relevant to the 1902 Anglo-Italian Accord, where Great Britain assured Italy that it was not a boundary line but merely a line limiting France's territorial expansion toward the Nile and, in any event, could not affect any rights the Ottoman Empire or any other Power might have in the region (res inter alios acta);

- In 1902, Italy had no status to agree a boundary concerning regions under Ottoman sovereignty and it had no power to renounce Ottoman territorial rights or claims in the region; however, in the Treaty of Ouchy, Italy inherited these

Ottoman rights and claims, as Great Britain and France acknowledged without reservation;

- **The Article 3 line was markedly different from the line shown on the Non-Annexed Map (15°35'N vs. 19°N) and both lines were markedly different from the Article 3 line as "interpreted" by the 1919 Convention (19°30'N);**

- **The so-called "interpretation" in 1919 of the Article 3 line modified that line by moving its end point north along 24°E longitude by 4° of latitude and, at least after the 1924 demarcation, by changing it into a boundary line as between Great Britain and France;**

- **Italy consistently and repeatedly rejected the 1919 Convention and its "interpretation" of the Article 3 line right up until 1935;**

- **On legal and factual grounds French *effectivités* did not and could not have had the effect of transforming the Article 3 line into a boundary line by 1919.**

It is to this last point that Part V now turns.

PART V

CHAD'S THIRD THEORY, BASED ON FRENCH COLONIAL EFFECTIVITIES, IS RULED OUT BY ARTICLE 3 OF THE 1955 TREATY ITSELF; IS INVALID IN LAW; AND IS NOT SUPPORTED BY THE FACTS

CHAPTER I. THE THIRD THEORY IS NOT LEGALLY SUPPORTABLE

5.01 The CM elaborates in considerable detail, and with ample citations to authority, on the point that Article 3 of the 1955 Treaty was an explicit recognition of the principle of uti possidetis[1]. In fact, Article 3 has been cited in the literature as an example of the acceptance in a treaty of this principle[2].

5.02 Article 3 does indeed constitute the recognition by Libya and France, respectively, and of course their successors, that certain boundaries dividing Libya from the adjoining French territories were boundaries resulting from the "actes internationaux en vigueur" listed in Annex I. It has been shown above that this does not imply the recognition that the full extent of the boundaries separating the territories of the two States necessarily resulted from these "actes".

5.03 Article 3 of the 1955 Treaty was not simply limited to an affirmation of uti possidetis; it did not merely effect a renvoi to that principle of international law. Article 3 went further; it identified the contents of the principle as it was to be applied by the parties, limiting it to the formula in Article 3: that the boundaries to be recognized were those that resulted from the "actes internationaux en vigueur", and only those boundaries. In other words, by the very fact of basing the recognition of the boundaries on those "actes", Article 3 clearly indicated, a contrario, that the parties to the Treaty agreed not to be bound to recognize boundaries that might be found to result from the conduct of the Colonial Powers as opposed to the agreements entered into between them.

5.04 Such a conclusion is not based on the text of Article 3 of the 1955 Treaty alone; it is directly confirmed by the travaux préparatoires, which reveal that, on the French side, the clear purpose was to avoid any possible recourse to the legal effect the activities of the Italian authorities in the borderlands might have had. As a result, the carefully planned French tactic was to -

---

[1] See, e.g., CM, p. 142, para. 2.

[2] See, CM, p. 76, paras. 99 and 100.

> "... poser le principe d'une délimitation sur le terrain à entreprendre dans l'avenir, mais en prenant pour seules bases les traités en vigueur à la date de la création de l'État libyen"[3].

5.05 In accordance with this tactic, the French negotiators advanced just such a proposal in the January phase of the 1955 negotiations; and it was accepted by the Libyan side[4]. As a result, the 1955 Treaty referred only to the "actes internationaux en vigueur" and excluded any account being taken of the possible effects of colonial effectivités, whether Italian or French.

5.06 Hence, Article 3 provides an essential element in the settlement of the present dispute, requiring the outright rejection of Chad's third theory under which, even if the "actes internationaux" referred to in Article 3 did not delimit a boundary east of Toummo, such a boundary would result, nevertheless, from the French presence in the area; and, thus, that the boundary in dispute has already been fixed as a result solely of French colonial effectivités. As just seen, such a result was ruled out by Article 3 of the 1955 Treaty, which provided that the boundary between Libya and France would be determined, in accordance with the principle of uti possidetis juris, solely on the basis of "actes internationaux en vigueur" on the date of Libya's independence, thereby excluding the criterion of colonial effectivités.

5.07 This leads to a number of other observations. First, even if this view of the meaning of Article 3 is not accepted, it is evident that the conduct of the Colonial Powers in violation of international law could, in no event, be taken into account or given any effect. The LM fully developed this point in its Part VI[5] and it is again taken up in Part IX below.

5.08 Second, the CM has, in any event, failed to advance evidence to prove French effectivités throughout the borderlands up to the 1919 line, which is the boundary line claimed by Chad. This failure is demonstrated in detail in Chapter II, which follows.

---

[3] Letter from the Governor-General of the A.E.F. to the Ministre de la France d'Outre-Mer, 2 May 1955, LM, French Archives Annex, p. 169. Emphasis added.

[4] See, para. 3.121, above, and LM, para. 5.442, et seq.

[5] See, LM, para. 6.24, et seq.

5.09 Finally, in the circumstance that, as Libya has shown, the "actes internationaux en vigueur" referred to in Article 3 of the 1955 Treaty did not determine a boundary and that, furthermore, as just shown, Article 3 ruled out the taking into account of colonial effectivités in order to remedy this failure, the conclusion to which the Court would inevitably be led is that there is no existing boundary between Libya and Chad. In these circumstances, the Court's mission is not to "déclarer" or "constater" where the boundary lies between the Parties, as Chad maintains; it is to establish that boundary hic et nunc, for the first time, on the basis of the competing claims of the Parties to territorial title in the borderlands.

5.10 Since this will involve determining the territorial extent of these claims, it is evident that effectivités - the situation on the ground and the related conduct of the various participants: the indigenous peoples, the Senoussi Order, the Ottoman Empire, France, Italy and Great Britain - considered in their broadest aspect, will have an important role to play, although one quite different from that suggested by Chad. That is to say that while Article 3 of the 1955 Treaty ruled out colonial effectivités as a criterion for the settlement of the present territorial dispute, the Court is not restricted from considering, in carrying out its task to determine the boundary in the absence of a conventional boundary, any document, event, fact, agreement or conduct that might have pertinence in establishing the legal titles of Libya and Chad to territory within the borderlands. As will be taken up below in Part IX, it is through identifying these legal titles and weighing all the relevant facts in order to determine their territorial extent within the borderlands that the Court will be able to resolve satisfactorily the present dispute. In this context, effectivités is a factor to be weighed. But it concerns factual elements that must be proved by the Party relying on it. It is to this subject that this pleading now turns.

CHAPTER II. THE LIMITED NATURE AND EXTENT OF THE FRENCH PRESENCE IN THE BORDERLANDS

SECTION 1. Introduction

5.11 It will be recalled that Chad relies on alleged French colonial effectivités in the Libya-Chad borderlands for two separate reasons. First, under Chad's second theory of the case, it is contended that such effectivités performed the miraculous task of transforming, prior to 1919, what Chad admits was no more than a French sphere of influence into territory over which France had legal title, with the result that the 1919 Convention line agreed between Great Britain and France became, it is argued, an international boundary opposable to Italy (and hence to Libya)[6]. The legal flaws in this line of argument have been set out above, paramount among which are, first, that reliance in this way on colonial effectivités is excluded by Article 3 of the 1955 Treaty[7] and, second, that the CM nowhere attempts to explain on what legal grounds French colonial effectivités could have been established over territory that was not terra nullius[8].

5.12 The second use to which effectivités have been put is that they constitute, according to Chad's third theory of its case, an autonomous basis of French title to territory up to the 1919 line[9]. As Libya has pointed out, this second use of effectivités is as legally flawed as the first[10].

5.13 In this Chapter, the factual aspects of French colonial effectivités will be examined. It will be shown that the CM has failed to prove such effectivités and that, in fact, such French military presence as existed in the borderlands fell far short of the kind of occupation that would be required to be shown in order to support either of Chad's theories that depend on French colonial effectivités. In setting out these facts, the parallel activities of the Ottoman Empire, the indigenous peoples and their Senoussi leaders, and the relations between them and the French will be discussed as well. It must be borne in mind, in considering the facts, that the concept of effectivités includes the conduct of a State in all its aspects relating to territorial occupation; it is not narrowly focussed on just the establishment of military posts.

---

[6] See, e.g., CM, p. 378, para. 10.

[7] See, para. 5.03, et seq., above.

[8] See, para. 9.14, et seq., below.

[9] See, CM, p. 379, para. 16.

[10] See, para. 5.06, above.

5.14 The analysis that follows is based on evidence produced so far by Chad and on such additional documents as Libya has been able to find, some of which are either annexed to the LM and discussed there or annexed and referred to here. The following are some of the principal conclusions to which an analysis of this evidence leads:

- Prior to 1913, no French military forces were stationed in the borderlands north of 15°N latitude;

- Starting in 1908 and ending in late 1912 - early 1913, Ottoman civil and military forces effectively occupied the borderlands north of 15°N; and a modus vivendi came into being between the French and Turkish forces until the 1912 Treaty of Ouchy required the Ottomans to withdraw in early 1913[11];

- Only after the Treaty of Ouchy and the final Ottoman withdrawal in March 1913 did French military forces start to penetrate the borderlands;

- Unlike the Ottoman occupation that preceded it, which took place at the urging of the indigenous peoples and the Senoussi, the French military advance was bitterly opposed by the peoples under Senoussi leadership with great loss of life and the destruction of their zawiyas;

- North of 15°N latitude, French forces had, even in 1930, established military posts at only a few widely-scattered places in Borkou and Ennedi, comprising only a small part of the borderlands; and their presence in Tibesti was limited to the years 1914-1916, after which they withdrew entirely from Tibesti until 1929-1930;

---

[11] See, LM, para. 4.121, et seq.

- Prior to 1929-1930, no French posts were established north of a strict southeast line under Article 3 of the 1899 Declaration;

- There was continual armed resistance to the French between 1913 and 1935; at no time was the French occupation other than military in character with the declared objective of protecting Chad lying to the south of the borderlands ("le Tchad utile").

5.15 It is for Chad, not Libya, to establish the facts concerning the presence of French forces in the borderlands, for much of Chad's case relies on alleged French effectivités. Chad is obliged to prove the facts on which depend these legal theories that are derived from alleged effectivités. In point of fact, however, the CM has advanced arguments relating to French activities in the borderlands that are in some cases wrong, in other cases unproven, and in still other cases contradictory, requiring Libya to set the record straight in this Counter-Memorial.

5.16 To offer a few examples here, the CM's opening Chapter contains the assertion that:

> "En 1913, la France procédait à l'occupation effective du B.E.T., où elle établit une administration coloniale très présente sur le terrain jusqu'en 1960, date de l'indépendance du Tchad[12]."

A similar assertion is made further on in the CM, in the context of suggesting certain "dates cruciales", in these terms:

> "1913: la France exerce à partir de cette date toutes les prérogatives de la souveraineté sur l'ensemble du B.E.T. transformant ainsi sa zone d'influence en véritable possession coloniale[13]."

5.17 These statements contain two factual allegations: (i) that French colonial effectivités existed without discontinuity within the part of the borderlands comprising Borkou, Ennedi and Tibesti from 1913 until 1960; and (ii) that the entirety of these regions was effectively occupied and administered as a colony by the French between these years. Neither proposition is correct. In fact the CM itself, in its extensive discussion of effectivités, reveals the errors and exaggerations contained in the statements just quoted.

---

[12] CM, p. 19, para. 13.

[13] CM, p. 43, para. 123 (iii).

5.18 For example, after stating, correctly, that the "pénétration française dans ces trois régions remonte aux années 1913-1914"[14], the CM adds this:

> "L'occupation du Borkou-Ennedi n'a pas connu d'interruption. En revanche, l'occupation du Tibesti s'interrompit en 1916[15]."

The CM goes further than this, admitting not only that there was an interruption in respect to Tibesti but also that until 1930 there had been no French effectivités in Tibesti:

> "... en 1930 la France réoccupa d'une manière stable et permanente le Tibesti parce que l'Italie venait d'achever sa conquête du Fezzan et menaçait d'envoyer ses troupes au sud pour s'emparer du Tibesti ...[16]."

Even this statement is an exaggeration since, as will be demonstrated, there was continued resistance by "dissident" tribes to French attempts to exercise authority even after 1930.

5.19 Thus, contrary to the CM's earlier statements, the same situation did not prevail in each of the three regions after 1913. The initial military incursion into Tibesti was interrupted in 1916; and Tibesti was thereafter not occupied by French forces until 1930, and then only because of the threat that, otherwise, the Italians might preempt the French. Moreover, the second proposition - that the entirety of the regions was effectively occupied after 1913 - is thus not only wrong as to Tibesti, but is misleading even as to Borkou and Ennedi, for the CM itself admits the very limited nature of France's military presence there:

---

[14] CM, p. 246, para. 146.

[15] CM, p. 248, para. 149.

[16] CM, p. 248, para. 150.

> "Les Français concentrèrent leurs troupes dans quatre oasis principales: celles de l'Aïr, du Djado-Kaouar, du Borkou (Faya-Largeau) et de l'Ennedi (Fada)[17]."

As Map LC-M 38 shows, the first two oases - Djado and Aïr - are well to the east of the borderlands; Faya, in Borkou, lies just south of 18°N latitude (and well south of the eastern edge of the Tibesti *massif*); Fada, in Ennedi, is just north of 17°N latitude. Thus, French troops were concentrated in a narrow band in the borderlands roughly between 19°E and 22°E longitude and 17°N and 18°N latitude. The northern borderlands remained under the control of the Senoussi who found themselves wedged in between the French forces advancing northward and the Italians descending toward the south.

5.20 The CM goes on to contend that French authority extended beyond these principal oases, however, claiming the situation on the ground to have been the following:

> "Ces quatre oasis devinrent le siège principal de l'appareil étatique et militaire de la France. De chacune de ces oasis irradiait l'autorité française sur toutes les régions avoisinantes. De plus, la France établit des postes et des détachements militaires sur les points névralgiques de chaque route caravanière, de manière à pouvoir contrôler le passage par ces routes et s'opposer efficacement aux bandes de pillards et à d'éventuels agresseurs venant du Nord[18]."

The details as to these alleged posts and the dates of their establishment are not given. As will be seen, the additional posts established were also very limited, and some were transitory; the caravan routes were not effectively policed by the French at all; such a post as Tekro, truly located at one of the "points névralgiques", was not established until 1934; and until the 1930s there was constant fighting between the French and the indigenous peoples, at times directly led once again by the Senoussi.

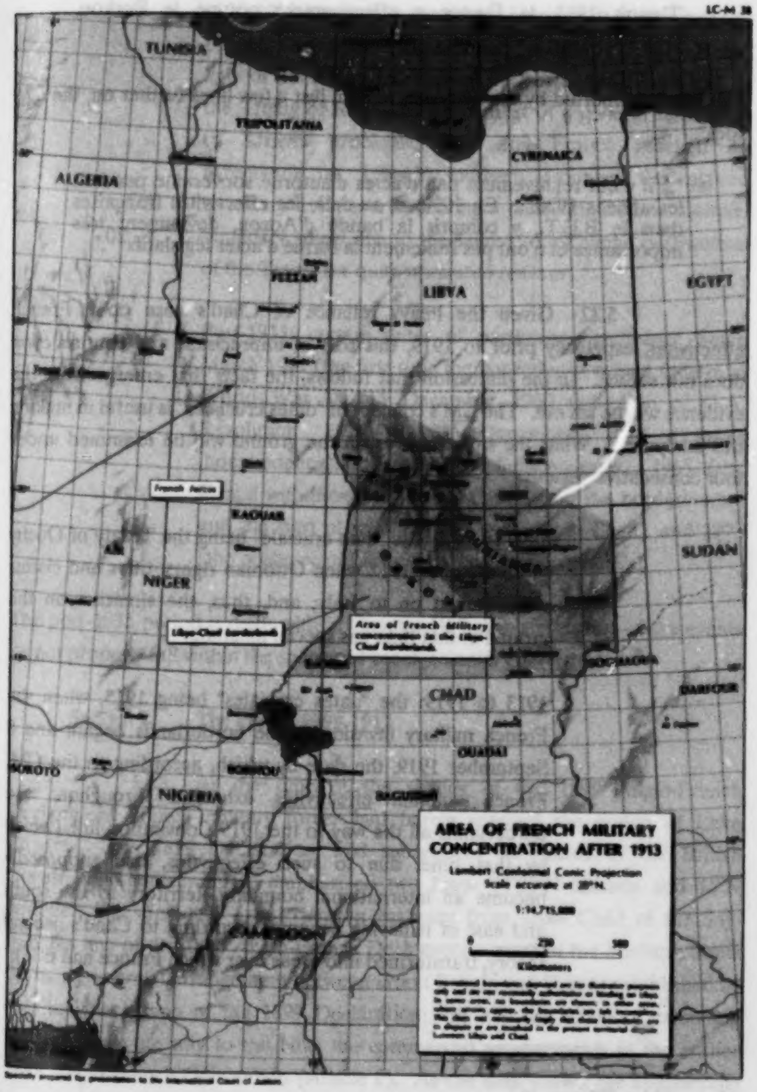
5.21 In the CM's conclusions the same inconsistencies and confusion reappear. Once again, an overly broad and inaccurate claim of French occupation is made:

---

[17] CM, p. 251, para. 161.

[18] Ibid.

LC-M 38


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
French forces
KAOUAR
AÏR
NIGER
TIBESTI
OUNIANGA
SUDAN
Libya-Chad borderlands
Area of French Military concentration in the Libya-Chad borderlands
BORKOU
CHAD
DARFOUR
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
AREA OF FRENCH MILITARY CONCENTRATION AFTER 1913
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:14,715,000
0
250
500
Kilometers

Specially prepared for presentation to the International Court of Justice.

> "Depuis 1913, la France a effectivement occupé le Borkou, l'Ennedi et le Tibesti[19]."

This is not supported by the evidence. Then, just a few lines further on, the CM adds:

> "... il y eut relativement peu d'actes d'autorité souveraine pendant les années 1920. ... En 1930, et au-delà, les effectivités françaises dans le B.E.T., y compris la bande d'Aozou, deviennent très importantes et n'ont pas seulement la forme d'actes législatifs[20]."

5.22 Given the heavy reliance of Chad's case upon French effectivités, especially prior to 1919, this sort of imprecision and contradiction does not suffice. In the discussion that follows, the facts that emerge from the evidence will be set out. The CM's concept of "dates cruciales" is useful in making this analysis[21]. What the situation was on the ground will be examined under four consecutive periods:

- 1899 to 1912: the "date cruciale" being the Treaty of Ouchy of 15 October 1912 when Ottoman rights, titles and claims were passed on to Italy; and, thus, the situation on the ground at that time has special meaning;

- 1913 to 1919: the "dates cruciales" being 1913, when the French military invasion of the borderlands began; and 8 September 1919, the date by which, according to the CM, French colonial effectivités extended throughout the borderlands all the way to the 1919 Convention line (which by that time, due to such effectivités, had supposedly become an international boundary, territory to the south and east of it having become, according to Chad's second theory, transformed into areas over which France had title);

---

[19] CM, p. 378, para. 10.

[20] CM, p. 378, para. 12.

[21] The term "crucial dates" is to be distinguished from the term "critical date", which in this case is the date of independence of Libya, on 24 December 1951, a matter on which the two Parties appear to be in agreement. See, para. 1.54, et seq., above.

- 1920-1935: the crucial dates here being 1929-1930, when the French Government determined to occupy Tibesti in the light of the Italian threat from the north; and 1935 when, in the Treaty of Rome, in the context of a general settlement of African problems, Italy and France reached an agreement on Libya's southern frontier, the agreed boundary line never becoming a conventional international boundary solely due to the failure to exchange ratifications of the Treaty for quite unrelated reasons;

- Post-1935: certain dates of particular significance being March 1941 (the first time the borderlands were a theatre in World War II), 15 December 1950 (adoption of G.A. Resolution 392(V)), 24 December 1951 (Libya's independence), 1960 (Chad's independence), 1965 (the formal withdrawal of French forces from the borderlands - and the start of rebellion and civil war in Chad), and 1973 (the presence of Libya in part of the borderlands).

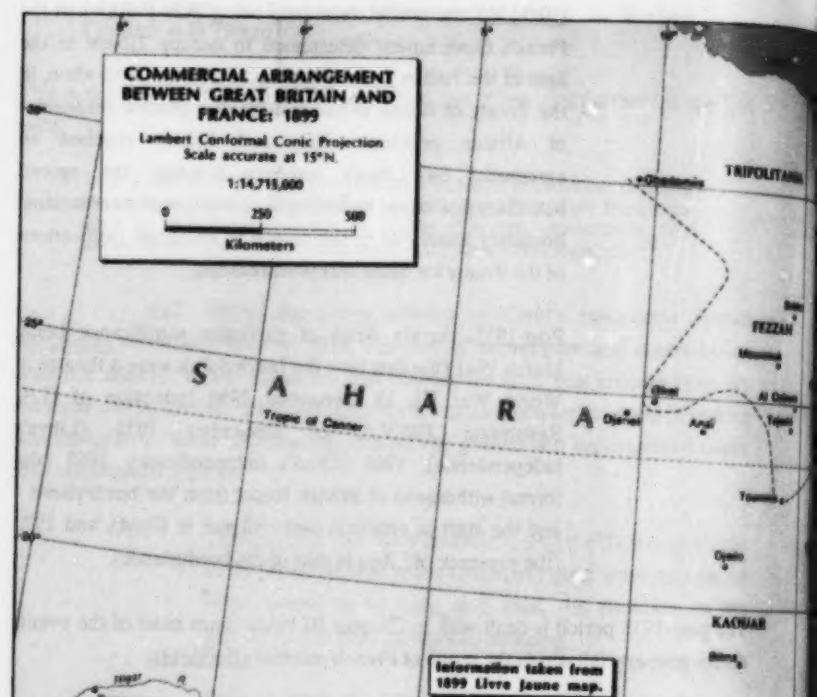
The post-1935 period is dealt with in Chapter III below since most of the events do not properly fall within the scope of French colonial effectivités.

SECTION 2. The Period 1899-1912

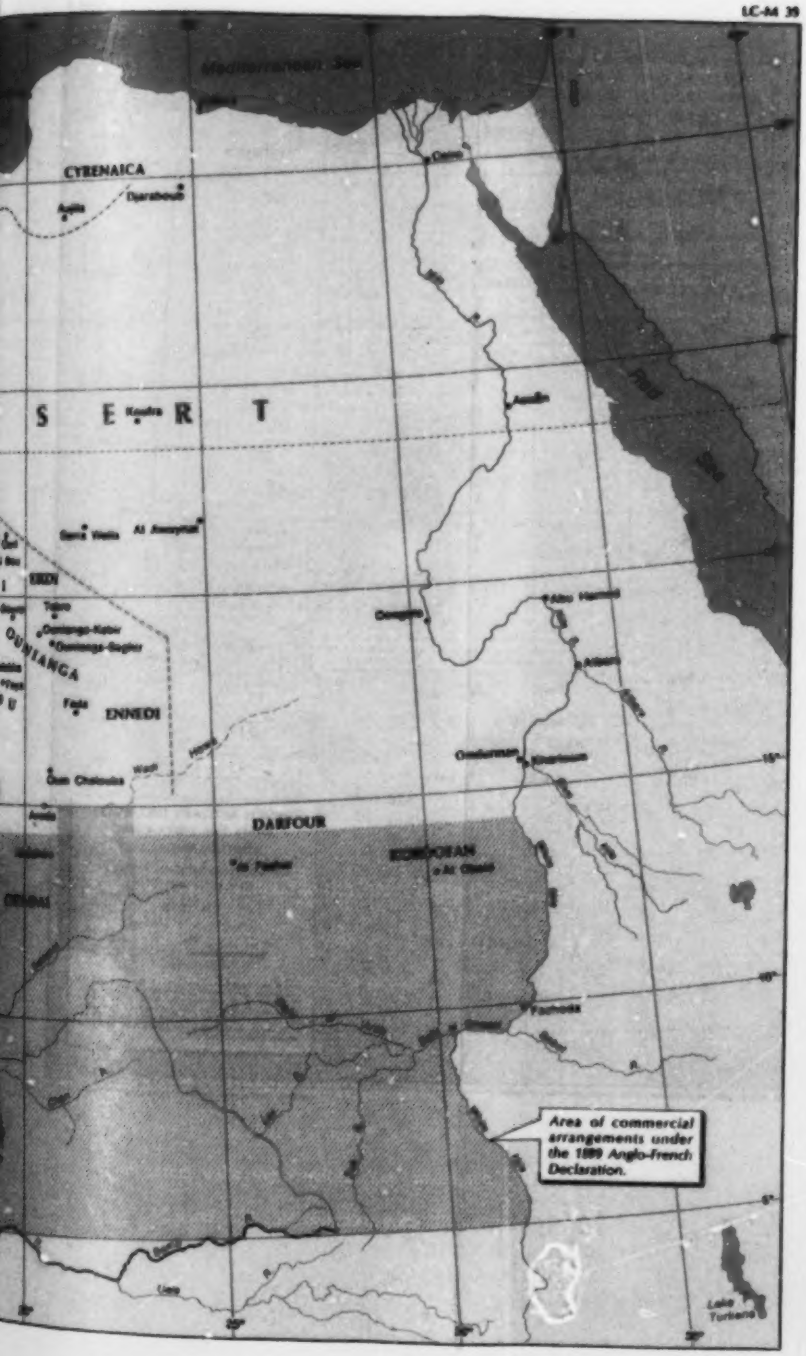
5.23 At the time of the signing of the 1899 Anglo-French Declaration, French military forces had barely reached the region of Lake Chad[22]. The 1899 Declaration, and subsequent statements of the British Government concerning it, emphasized two lines: 14°20'N latitude and 15°N latitude. The first line - an extension eastward from Lake Chad of the Say-Barroua line of the 1890 Anglo-French Declaration - marked the northern limits of the commercial arrangement between Great Britain and France established by the final paragraph of the 1899 Declaration: this had the effect of extending eastwards, all the way to the Nile, the commercial arrangements in the earlier 1898 Anglo-French Convention (Article 9). As the map shows, the commercial arrangements under the 1899 Declaration operated in the zone between 5°N and 14°20'N (Map LC-M 39). In fact, at the outset of the negotiations leading to the

---

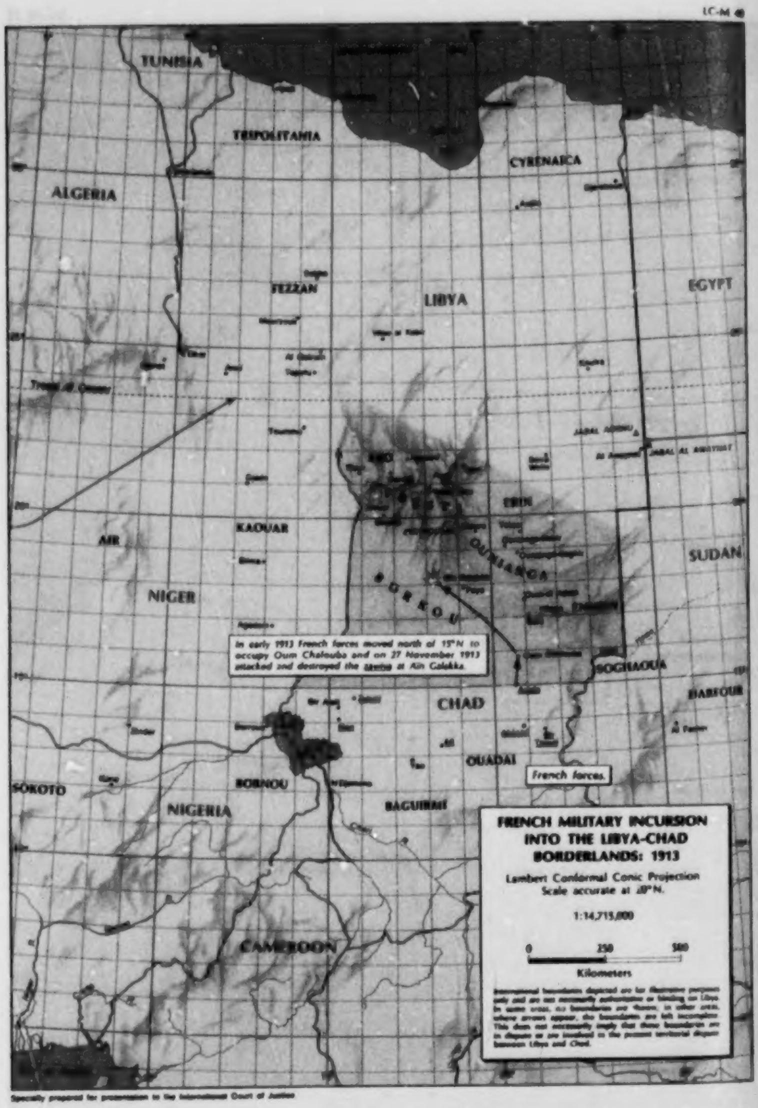
[22] The historical facts of this period are examined in detail in Part IV of the LM.



COMMERCIAL ARRANGEMENT BETWEEN GREAT BRITAIN AND FRANCE: 1899
Lambert Conformal Conic Projection
Scale accurate at 15°N.
1:14,715,000
0
250
500
Kilometers
TRIPOLITANIA
Ghadamis
FEZZAN
Murzuq
Ghat
Djanet
Al Qatrun
Tajarhi
Tummo
S A H A R A
Tropic of Cancer
KAOUAR
Bilma
Agadem
Information taken from 1899 Livre Jaune map.
Tombouctou
Say
Zinder
Sokoto
SOKOTO
Kano
BORNOU
Accra
Lagos
Gulf of Guinea


LC-84 39
Mediterranean Sea
CYRENAICA
Djaraboub
Aujila
Cairo
Nile
Red Sea
S E R T
Koufra
Assuan
Sarra Wells
Al Awaynat
Tekro
Ounianga-Kebir
Ounianga-Serir
OUNIANGA
Fada
ENNEDI
Wadi Howa
Oum Chalouba
Dongola
Abu Hamed
Atbara
Omdurman
Khartoum
15°
DARFOUR
Al Fasher
KORDOFAN
Al Obeid
10°
Fashoda
5°
Uele
Lake Turkana
25°
30°
35°

Area of commercial arrangements under the 1899 Anglo-French Declaration.



FRENCH MILITARY INCURSION INTO THE LIBYA-CHAD BORDERLANDS: 1913

Lambert Conformal Conic Projection
Scale accurate at 20°N.

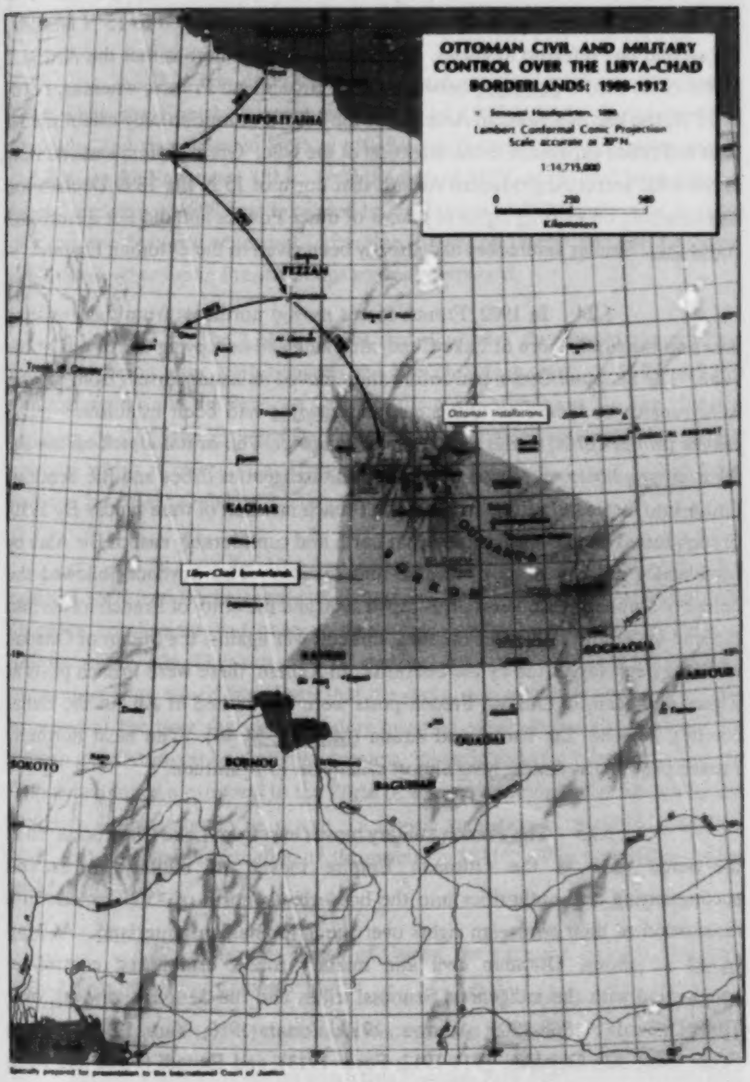
1:14,715,000

In early 1913 French forces moved north of 15°N to occupy Oum Chalouba and on 27 November 1913 attacked and destroyed the zawiya at Ain Galakka.

French forces.

LC-M 40
TUNISIA
TRIPOLITANIA
ALGERIA
CYRENAICA
FEZZAN
LIBYA
EGYPT
JABAL AL AWAYNAT
ENNEDI
OUNIANGA
BORKOU
SUDAN
AIR
KAOUAR
NIGER
CHAD
OUADAI
SOGHAOUA
DARFOUR
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
0
250
500
Kilometers

Specially prepared for presentation to the International Court of Justice


LC-84 41
OTTOMAN CIVIL AND MILITARY CONTROL OVER THE LIBYA-CHAD BORDERLANDS: 1908-1912
Lambert Conformal Conic Projection
Scale accurate at 30°N.
1:14,715,000
0
250
500
Kilometers
TRIPOLITANIA
FEZZAN
Tropic of Cancer
Ottoman installations
KAOUAR
Libya-Chad borderlands
BORKOU
KANEM
DARFOUR
OUADAI
SOKOTO
BORNOU
BAGUIRMI

Specially prepared for presentation to the International Court of Justice

1899 Declaration, 14°20'N was proposed as the northern limit for the new Declaration's Article 2 provisions. This was ultimately changed to 15°N latitude, the second line referred to above. The important point here is that the Article 2 sector concerned a boundary between Great Britain and France; whereas, north of 15°N, the line described in Article 3 of the 1899 Declaration only established a limit to French expansion in the direction of the Nile. Great Britain assured Italy in the 1902 secret Anglo-Italian Accord that north of 15°N the 1899 Declaration had no effect on existing rights or claims of other Powers and did not disturb the status quo. Similar assurances had already been given to the Ottoman Empire.

5.24 In 1902, French forces moved northeast from their existing bases on the south shore of Lake Chad, attacking and occupying the zawiya at Bir Alali. The Senoussi Order had before then moved its headquarters from Koufra in Cyrenaica to Gouro in Ounianga, and zawiyas had been established much earlier (in the 1870s) in the region of Ounianga[23]. The brutal attack on the Bir Alali zawiya, however, served to coalesce the indigenous tribes and the Senoussi Order into increased efforts to resist the French invasion of their lands. By 1910, French forces had advanced somewhat north and considerably east of Bir Alali by establishing military posts in Kanem and Ouadaï. This advance followed the defeat of Rabbah at Kousseri on 22 April 1900 and the entry of French forces into Abéché on 2 June 1909 after the long, difficult war against the Sultan of Ouadaï, who had been supported by the Senoussi. In Kanem, there were French posts at Zigueï and Mao; in Ouadaï, French posts were established at Ati (in the Batha county), Abéché, Bir Taouil and Arada (Map LC-M 40). The most northerly French post was at Arada, lying almost exactly on 15°N latitude.

5.25 The French military moves east from Lake Chad occurred at the same time as the Ottoman Empire moved its military forces and accompanying civil authorities into the borderlands north of 15°N latitude in a reassertion of their sovereign rights over the Tripolitanian hinterland. As Map LC-M 41 shows, Ottoman civil and military forces established control, in conjunction with the indigenous Senoussi tribes and the Senoussi zawiyas, over Tibesti (Bardaï: 1908-1909; Aouzou: 1910; Zouar: 1910; Yao: 1911), Borkou (Yen: 1909; Aïn Galakka: 1911-1912; Faya: 1913), and Ennedi (Fada and Baki: 1912); and went as far south as Oum Chalouba (south of 16°N) in 1912. The Ottoman forces did not occupy the regions of Ounianga and Erdi. These were already under firm Senoussi control, the headquarters of the Order being at Gouro.

---

[23] See, LM, para. 3.60, et seq.

5.26 This situation on the ground remained unchanged until early 1913, when the French forces moved north of 15°N latitude to occupy Oum Chalouba and then invaded Borkou attacking and destroying the *zawiya* at Aïn Galakka on 27 November 1913. Thus the line of 15°N, which had been given a special meaning in 1899, was respected by the French and Ottomans as a *de facto* dividing line between them until after the Treaty of Ouchy and the Ottoman withdrawal, whereupon French troops moved northward.

5.27 The *LM* describes and illustrates the *modus vivendi* that came into being after 1910 between the French forces south of 15°N and the Ottoman forces and the Senoussi Order to the north of that line[24]. The *Histoire Militaire de l'Afrique Equatoriale Française* pays considerable attention to this episode, which it refers to as "[u]n arrangement passager ... bien conclu avec l'officier turc d'Aïn-Galakka"[25].

5.28 As the *Histoire Militaire* recounts, the question of moving north of 15°N into Borkou came up in 1911 when news reached the French that Ottoman installations had been established at Bardaï and Zouar, and shortly afterwards at Aïn Galakka "où le pavillon Ottoman fut hissé"[26]. Strict instructions were issued from Paris that the *status quo* not be disturbed, for it was expected at the time that the boundary question would be settled between the French and Ottomans by diplomatic means. In anticipation of this, the *vilayet* of Tripoli had made a proposal to the Porte of where the boundary proposed by the Ottoman Empire should be drawn - a drastic reduction in the 1890 Ottoman claim that reflected the situation on the ground in 1911[27]. This proposal is shown on *Map LC-M* 42.

5.29 With the Treaty of Ouchy, the situation changed abruptly. As the *Histoire Militaire* summarizes it:

---

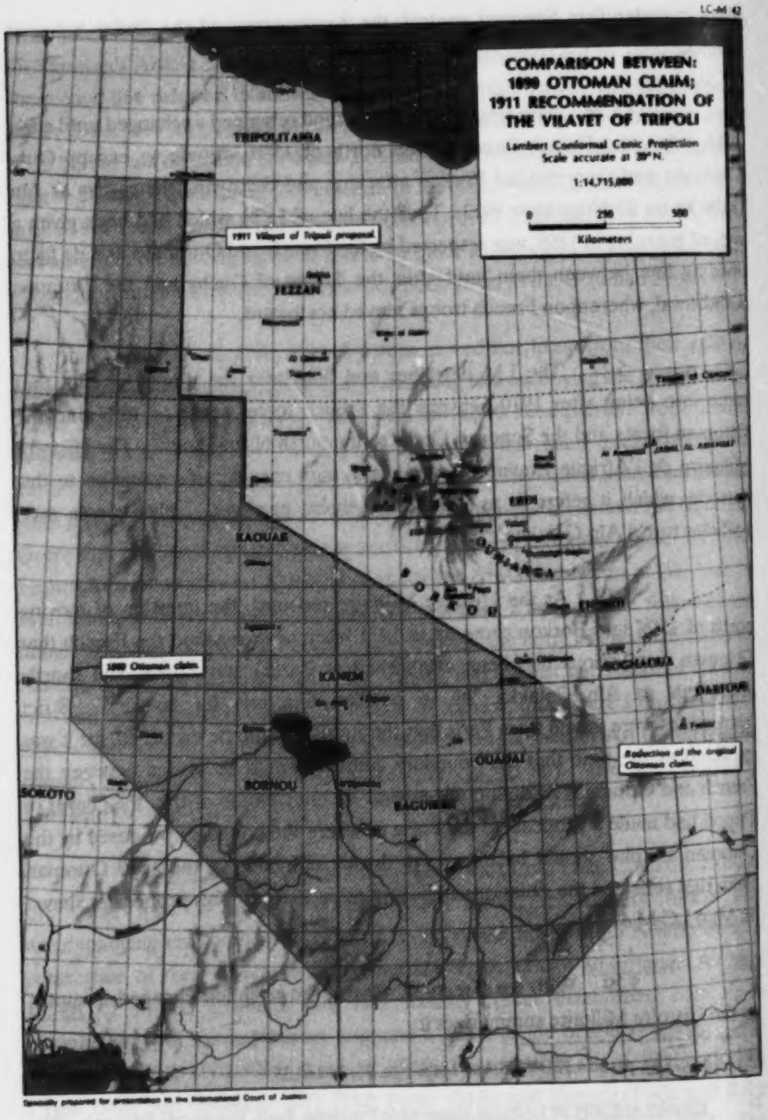
[24] *See*, *LM*, paras. 4.121-4.165, and Maps Nos. 33, 34 and 35.

[25] *Histoire Militaire de l'Afrique Equatoriale Française*, Paris, Imprimerie Nationale, 1931, p. 243; *LM*, Exhibit 26.

[26] *Ibid*., p. 391. *LM*, Exhibit 26.

[27] *See*, *LM*, paras. 4.140-147 and Map No. 35.

LC-M 42


COMPARISON BETWEEN:
1890 OTTOMAN CLAIM;
1911 RECOMMENDATION OF
THE VILAYET OF TRIPOLI
Lambert Conformal Conic Projection
Scale accurate at 20° N.
1:14,715,000
0
250
500
Kilometers
TRIPOLITANIA
1911 Vilayet of Tripoli proposal
FEZZAN
Tropic of Cancer
JABAL AL AWAYNAT
ERDI
OUNIANGA
BORKOU
ENNEDI
KAOUAR
OUADAI
1890 Ottoman claim
KANEM
DARFOUR
Reduction of the original Ottoman claim.
SOKOTO
BORNOU
BAGUIRMI

Specially prepared for presentation to the International Court of Justice

> "Par le traité de Lausanne, signé le 18 octobre 1912, les Turcs abandonnèrent aux Italiens leur souveraineté sur la Tripolitaine et la Cyrénaïque. La Senoussiya restait seule maîtresse au Borkou et l'attitude déjà assez froide d'Abdallah Tooueur[28] ne tarda pas à devenir hostile.
>
> Fin octobre, Abdallah Tooueur fit proclamer par le kaïmakan la nouvelle d'un protectorat turc sur l'Ennedi et de l'installation d'un poste ottoman à Baki. Le plan des Khouans[29] se dévoilait nettement. Il s'agissait de relier Koufra par Oueyta au Dar Four, au Massalit, au Sila et au Rounga en contournant la zone française d'occupation effective[30]."

The French foresaw a new Senoussi offensive, and felt called upon to take additional measures of security at once to protect the installations already established south of 15°N. The resulting developments are set out in the LM, including the interesting exchanges between the Ottoman Kaimakam at Aïn Galakka (a civil official appointed by a Mudir to conduct the affairs in each district under the Mudir's administration[31]), and the French Commander at Abéché[32]. In the event, the Ottoman civil and military authorities felt compelled, in the light of the Treaty of Ouchy, to withdraw from Borkou and Ennedi in early 1913. French military forces thereupon occupied Oum Chalouba (just south of 16°N). This was the start of the French offensive north of 15°N. One noteworthy aspect of this episode is that, unlike the French, whose representatives were military officers, the Ottoman Empire's local authority was the Kaimakam. Another aspect is that, with the Ottoman withdrawal from Borkou, the Senoussi "restait seule maîtresse", as the Histoire Militaire puts it, and it was against the inhabitants of Borkou led by the Senoussi that the French mounted their 1913 offensive and invasion of Borkou. Set out below, in summary form, is the structure of the Ottoman rule in Libya and the structure of the Senoussi Order[33].

---

[28] The Senoussi sheikh of the zawiya at Aïn Galakka.

[29] As defined in the Histoire Militaire de l'Afrique Equatoriale Française, p. 239, fn. 1:

> "On appelle *Khouans* les membres d'une confrérie religieuse; au Tchad, ce terme a pris un sens plus restreint et désigne un *senoussiste*, non seulement affilié à la confrérie de la Senoussiya, mais d'une *race ayant du prestige*."

(A copy of this page is attached at Exhibit LC-M 13.)

[30] Ibid., p. 424. (A copy of this page is attached at Exhibit LC-M 13.)

[31] See, para. 3.39, above, and related fns. for definitions of these civilian positions.

[32] See, LM, paras. 4.148-4.150.

Ottoman Rule in Libya

Sultan

Sublime Porte

- Vali of the vilayet Tripoli (Governor of Libya with title of Pasha).
- The vilayet was divided into districts, Liwas or Sanjags, each district being headed by a District Governor or Mutassarif.
- The Districts were grouped into counties (Nahias), with a County Administrator (Mudir). The sub-districts were run by a district officer (Kaimakam).
- Staff of the Vali
    - Deputy Governor (Qadhi): Senior person after the Vali; concerned with religious matters and the overseeing of the religious or Sharia courts.
    - Head of Accounts and Financial Affairs.
    - General Secretary.
    - Head of Foreign Affairs.
    - Head of Education.
    - Senior Engineer.
    - Chief of Documents.
    - Manager of State Property.
    - Manager of Religious Endowments.
    - Chief of Police.

Senoussi Organisation

- Head of the Senoussi (the Grand Senoussi).
- Senior brethren or Ikhwan (12 persons who trained students and supervised the running of affairs).
- Sheikh of zawiya.
- Deputy Sheikh of zawiya (supervised its affairs).
- Council or Board of Sheikhs of the tribes of a region (solved tribal and ordinary problems).

---

[33] Exhibit 14 sets out and describes these organisational structures in greater detail. It was prepared by the JIHAD Center in Tripoli.

5.30 The CM covers the important events involving the relations and arrangements between the local Ottoman and French military authorities in a cursory way, if at all. It acknowledges what is described as "un bref 'intermède turc"[34]; and it describes in several paragraphs what it pretends this "intermède turc" to have consisted of[35]. The CM mentions a rapprochement between the Ottomans and the Senoussi in the period 1906-1909 and that the Turks were in Bardaï and Aïn Galakka in 1911. (As already noted, the Ottoman occupation of Bardaï occurred earlier, in 1908-1909.) There then appears this interesting paragraph:

> "Sans doute, cette présence turque est-elle limitée et se traduit-elle seulement par l'envoi de troupes très nombreuses et de quelques fonctionnaires civils qui semblent plus soumis à l'autorité de la Senoussia qu'ils ne sont en mesure de lui imposer la leur. Il n'en reste pas moins que, compte tenu des circonstances et du caractère peu hospitalier de la région, cette présence effective aurait pu être de nature, conformément au droit de l'époque, à constituer un titre territorial suffisant[36]."

5.31 The paragraph contains three important - and correct - admissions: (i) the fact that the Ottoman troops sent to the borderlands were "très nombreuses"; (ii) the presence of a civil component - which was totally lacking in the case of the subsequent French forces; and (iii) that the Ottoman presence would have been sufficient in the circumstances to "constituer un titre territorial suffisant". But, the CM argues, the Ottoman occupation fell short of the required standard of effectivités under international law[37]. Curiously, although citing the Island of Palmas Case, the CM omits the well-known standard set out by Judge Huber there: the "continuous and peaceful display of the functions of a State within a given region"[38]. Yet it was precisely this - the element of peacefulness - that was one of the critical distinctions between the French military invasion of the borderlands and the prior Ottoman occupation. The Ottoman forces had been requested by the Senoussi peoples to assist in the common objective of resisting the French invasion of their lands. Although the CM plays up the rather strained, arms-length relationship between the Senoussi and the Ottomans, there is no avoiding the fact that the Ottoman occupation was peaceful and the French occupation that succeeded it was not. There is no evidence that the Ottoman military engaged in any fighting. Moreover, the Ottoman civil and military forces, combined with the Senoussi, maintained effective control throughout the borderlands and not at a few scattered posts. In particular, as shown on Map LC-M 41 referred to at paragraph 5.25 above, Ottoman forces occupied posts throughout Tibesti.

---

[34] CM, p. 19, para. 13.

[35] CM, p. 179, para. 131, et seq.

[36] CM, p. 179, para. 135. Emphasis added.

[37] See, CM, p. 180, para. 136.

[38] Island of Palmas Case, Reports of International Arbitral Awards, Vol II., p. 840. Emphasis added. (A copy of this page is attached as Exhibit LC-M 15.)

5.32 The CM suggests that the period of Ottoman occupation was too short, too "éphémère", to have established a valid title to the territory occupied; and it claims there are conflicting views among "authors" over the length of this period: five years, three years or one year[39]. While it may be that French authors and official spokesmen sought to disparage the Ottoman occupation in later years - and passed their views on to the British - the facts speak for themselves. The Ottoman occupation, combined with the Senoussi presence, was totally effective in the entire borderlands area. Ottoman control began in 1908 and ended in early 1913. This was evidently longer than France's two-year, truly ephemeral, presence in Tibesti between 1914 and 1916.

5.33 Another essential point concerns the effect of the Treaty of Ouchy, which occasioned the Ottoman withdrawal. The CM makes this assertion concerning that event:

> "De ce fait, on est revenu au statu quo ante; toute trace de 'souveraineté' turque a disparu et la situation antérieure s'est trouvée rétablie, la région étant, au regard des normes de droit international prévalant à l'époque, susceptible d'appropriation coloniale[40]."

This is incorrect on several counts. The Ottoman rights, titles and claims did not disappear; they were passed on to Italy in the Treaty of Ouchy, as France and Great Britain recognized, without reservation, immediately after the Treaty was signed in 1912[41]; and as they again did in Article 10 of the Treaty of London[42]. No concrete assertion of these rights by Italy in the borderlands would have been possible with the onset in 1914 of World War I, not to speak of the great difficulties Italy was having at the time even to remain in Tripolitania and Cyrenaica proper in view of the resistance of the Libyan peoples assisted by the Senoussi.

---

[39] CM, p. 180, para. 137.

[40] CM, p. 180, para. 138.

5.34 A second mistake in the quoted passage is that the status quo ante was not what the CM perceives. The borderlands were occupied by the Senoussi peoples, the indigenous tribes holding allegiance to the Senoussi Order. Their title remained unaffected. The region was not terra nullius, as Chad admits, and hence not "susceptible d'appropriation coloniale" in the absence of agreement with the peoples having sovereignty. Far from agreeing to French acquisition of their lands, these peoples fought desperately to keep the French forces away. Thus, at the end of the period 1899-1912, with the Ottoman forces withdrawing - as they were obliged to do by the Treaty of Ouchy - the Senoussi remained "seule maîtresse" in the borderlands, as the Histoire Militaire expresses it[43].

SECTION 3. The Period 1913-1919

5.35 As just mentioned, France's initial move north of 15°N latitude occurred in early 1913, when French forces occupied Oum Chalouba, just abandoned by the Ottomans on the order of the Kaimakam of Borkou. The French forces were under the overall command of Colonel Largeau, who had gone back to France in 1912 to review the developing situation with his government. On 23 June 1913, the French Government took the decision to authorize the invasion of Borkou, and Colonel Largeau returned in September 1913 to carry out this mission.

5.36 It is important to understand why this military move northward was felt necessary. Borkou and Ennedi - and Tibesti to their north -

---

[41] See, LM, para. 5.117, et seq.

[42] See, LM, para. 5.150, et seq. Article 10 provided, as follows:

> "All rights and privileges in Libya at present belonging to the Sultan by virtue of the Treaty of Lausanne are transferred to Italy."

[43] See, para. 5.29, above.

were regarded in military terms as the "northern front" that had to be secured in order to protect Chad, which was part of the autonomous French colony of Oubangui-Chari-Tchad. It is striking in the official French account in the Histoire Militaire (published in 1931) how Chad (or "Tchad") is consistently referred to as lying to the south of the "front nord", the borderlands. The purpose of moving the French military forces north was not to occupy the area; it was to secure the northern front, from which attacks were being launched against Chad, as the French military then conceived of it - the area generally in the vicinity of Lake Chad and to its east and south[44]. This region had been conquered in the long and difficult struggles against first Rabbah and then the Sultan of Ouadaï. It had also been there, in 1902, where the French forces had their first major victory over the Senoussi - at Bir Alali. The purpose of the French military move north of 15°N at the time is well summed up in a French study furnished by Chad:

> "En résumé, par ses avant-postes du Tibesti, du Borkou et de l'Ennedi, notre colonie du Tchad est admirablement protégée et ses populations sédentaires peuvent vivre et travailler en paix - sans ces avant-postes c'est la situation de 1911 qui renaît, c'est le Tchad ouvert à toutes les agressions possibles.
>
> Et ce n'est qu'au prix des plus sanglants sacrifices, après avoir abattu les uns après les autres les grands nomades affiliés à la Senoussia, dont les crimes en ce pays ne se comptaient plus, que nous avons enfin réussi à y faire régner la sécurité et la paix[45]."

5.37 When Colonel Largeau was authorized in June 1913 to launch his forces northward into Borkou, widespread resistance to the French once again prevailed in the region between Kanem and Borkou. While the Ottoman forces were in occupation north of 15°N, they and the Senoussi had maintained order to a substantial extent; and the French commander and his Turkish military counterpart in Borkou got on well together. According to the Histoire Militaire, the situation had much improved after the Turks had established control in Borkou, and the forces of the two States were cooperating to try to eliminate the rezzous[46], which menaced the French presence in Kanem.

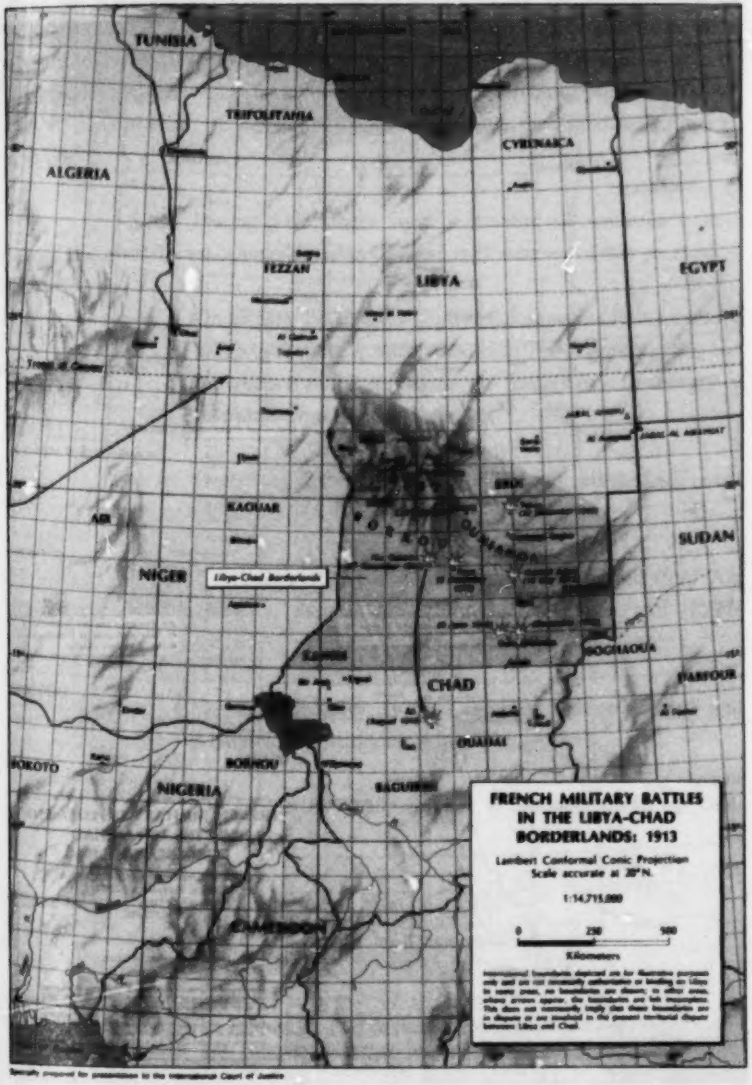
---

[44] See, in this regard, LM, paras. 4.115-4.119.

[45] CM, Production 44, "Etude sur l'Occupation Turque au Borkou, dans le Tibesti & dans l'Ennedi de 1911 à 1913". Emphasis added to draw attention to the term "avant-postes".

[46] The term "rezzous" is defined in the Histoire Militaire as "un groupe d'hommes armés". Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 239; LM, Exhibit 26. In fact, the term covers any active resistance mounted by the indigenous tribes against French attempts at occupation, including activities that the French might have characterized as "banditry".

LC-M 43


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
Tropic of Cancer
AIR
KAOUAR
BORKOU
OUNIANGA
ENNEDI
SUDAN
NIGER
Libya-Chad Borderlands
KANEM
CHAD
BOGHAOUA
DARFOUR
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
0
250
500
Kilometers

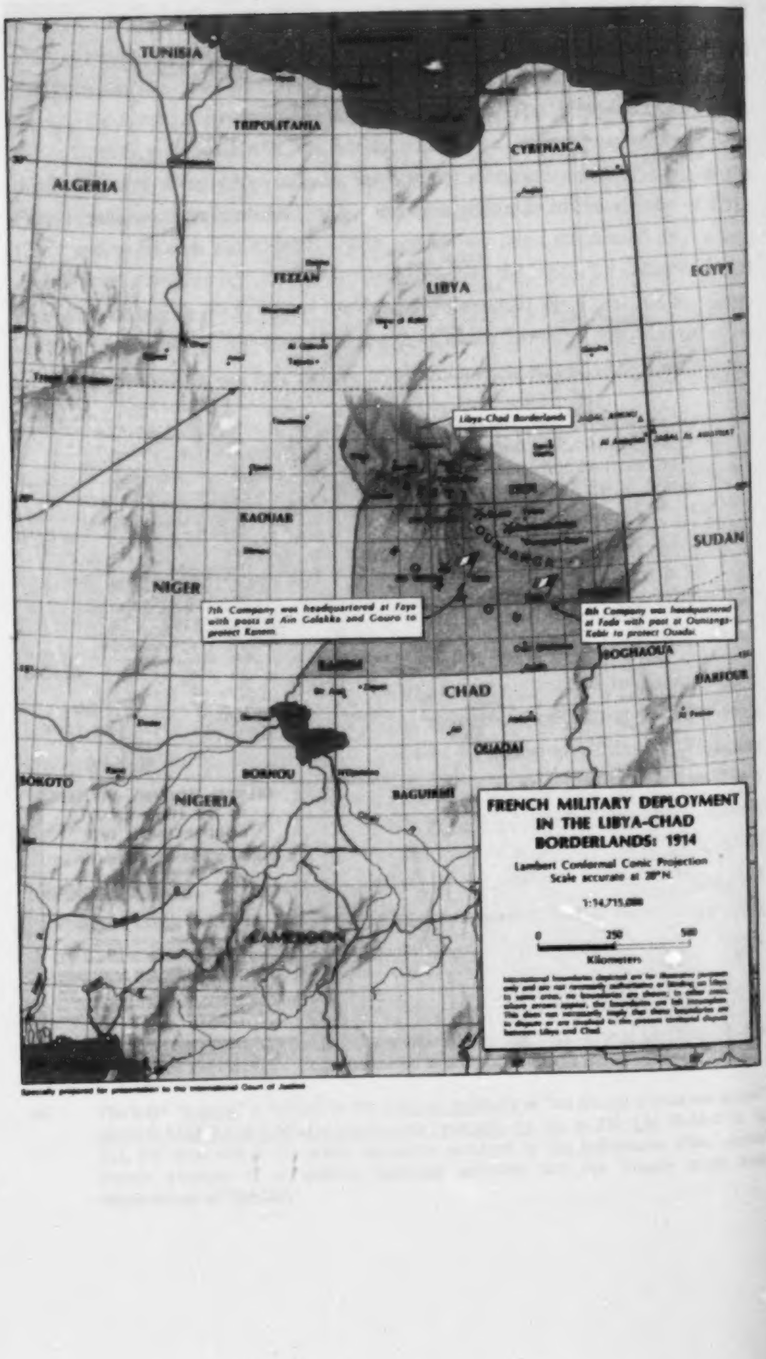
FRENCH MILITARY BATTLES IN THE LIBYA-CHAD BORDERLANDS: 1913

Lambert Conformal Conic Projection
Scale accurate at 20°N.

1:14,715,000

Specially prepared for presentation to the International Court of Justice

LC-M 44


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
Libya-Chad Borderlands
JABAL ARKNU
JABAL AL AWAYNAT
KAOUAR
OUNIANGA
SUDAN
NIGER
BOGHAOUA
DARFOUR
KANEM
CHAD
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
0
250
500
Kilometers

7th Company was headquartered at Faya with posts at Ain Galakka and Gouro to protect Kanem.

8th Company was headquartered at Fada with post at Ounianga-Kebir to protect Ouadai.

FRENCH MILITARY DEPLOYMENT IN THE LIBYA-CHAD BORDERLANDS: 1914

Lambert Conformal Conic Projection
Scale accurate at 20°N.

1:14,715,000

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where present appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

With the Ottoman departure, the rezzous resumed, for the Senoussi had no further incentive to prevent these acts, confirming Colonel Largeau's earlier views that Borkou and Ennedi would have to be secured if Chad to the south was to be protected. But the French military forces in the "circonscription de Tchad" sought, nevertheless, to avoid further conflict with the Senoussi, if at all possible[47].

5.38 During 1913, there were a number of scattered battles before and after the main assault on Aïn Galakka in November of that year:

- On 13 May 1913, at the Oum-el Adam wells (18°N), a major battle took place in which Abdallah Tooueur was killed; but the French failed to pursue the enemy due to the policy restraints from Paris still in effect[48];
- On 6 June 1913, a group of 60 Bideyat attacked a French patrol near Oum Chalouba[49];
- On August 1913, the Senoussi launched a raid from Aïn Galakka, across the Bahr-el-Ghazal, on Aïi (13°N latitude)[50];
- On 22 November 1913, a caravan between Tekro and Mahamid was attacked;
- On December 1913, another attack was made on Oum Chalouba.

These military events are illustrated on Map LC-M 43.

---

[47] See, correspondence between the Chef de circonscription de Ouadaï and the Kaimakam at Aïn Galakka. See, Histoire Militaire de l'Afrique Equatoriale Française, op. cit., pp. 427-431. (A copy of these pages is attached at Exhibit LC-M 13.)

[48] Ibid., p. 427, Exhibit LC-M 13.

[49] Ibid., p. 431, Exhibit LC-M 13.

[50] Ibid.

5.39 In November 1913, Colonel Largeau led a large column[51] northward into Borkou. Commandant Tilho was battalion commander, and had under him the 7th and 8th companies and supporting artillery. On 27 November 1913, the zawiya at Aïn Galakka fell to the French and was destroyed. Faya fell on 3 December. Colonel Largeau at this point made an overture to the Senoussi for a peaceful settlement, sending the widow of the sheikh of Aïn Galakka to Gouro as emissary[52]. The Head of the Senoussi had by then left, moving the Order's headquarters north once more to Koufra. In any event, the Order showed no interest in any agreement with the French.

5.40 Colonel Largeau's column moved north to Gouro (14 December 1913), the recently abandoned Senoussi headquarters, and then to Ounianga Kebir. At Gouro, the French column encountered resistance. After trying once again, without success, to contact the Head of the Senoussi, Colonel Largeau ordered the destruction of the kouba[53]. To this day, Gouro remains a major Muslim shrine, a symbol of resistance against the colonial forces that destroyed this holy place.

5.41 The French established a post at Ounianga Kebir on 26 December 1913. From there a reconnaissance of Tekro was made - but no post was established at this veritable "point névralgique" on the main caravan route south from Koufra[54]. Colonel Largeau then turned his column back to Faya. The French military organization created in the borderlands was clearly aimed at the perceived Senoussi threat from Koufra. Batallion headquarters was established at Faya, where the 7th company was stationed, to which posts at Aïn Galakka and Gouro reported (Map LC-M 44). Its objective was the protection of Kanem. The 8th company was stationed at Fada, with the objective of protecting Ouadaï[55]. The post at Ounianga Kebir (manned by some 25-30 méharistes or

---

[51] 33 Europeans, 733 Africans (mainly Senegalese troops, comprising 407 riflemen), 35 horses, 1089 camels.

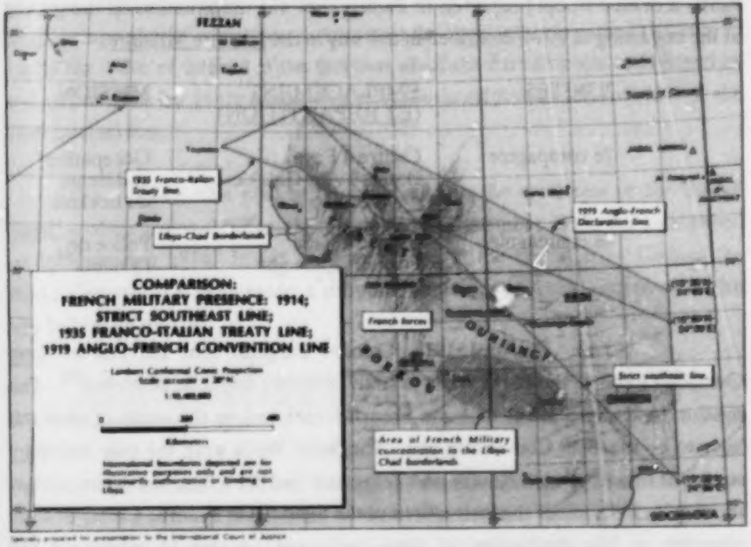
[52] See, Histoire Militaire de l'Afrique Equatoriale Française, op. cit., pp. 450-451. Exhibit LC-M 13.

[53] The domed ceiling structure constituting the most holy part of the mosque within the zawiya.

[54] See, para. 5.20, above.

[55] CM, Annex 112.

LC-M 45


FEZZAN
1935 Franco-Italian Treaty line
Libya-Chad borderlands
1919 Anglo-French Declaration line
COMPARISON:
FRENCH MILITARY PRESENCE: 1914;
STRICT SOUTHEAST LINE;
1935 FRANCO-ITALIAN TREATY LINE;
1919 ANGLO-FRENCH CONVENTION LINE
Lambert Conformal Conic Projection
Scale accurate at 20°N
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.
French forces
OUNIANGA
BORKOU
Strict southeast line
Area of French Military concentration in the Libya-Chad borderlands

Specially prepared for presentation to the International Court of Justice

camel-mounted troops) reported to Fada. That was the situation on the ground at the beginning of 1914, described in this way in the Histoire Militaire:

"UNITES	EMPLACEMENT (ET REPARTITION)	MISSION
7e compagnie	Centre à Faya ... Postes à Aïn-Galakka ... et Gouro.	Occupation et défense du Borkou.
8e compagnie	Centre à Fada Poste à Ounianga Kébir ...[57]."	Police de l'Ennedi[56].

5.42 In April 1914, Colonel Largeau sent Lt. Fouché from Ounianga Kebir to the Sarra Wells to study how they might be destroyed[58]. This mission (6-26 April 1914) took the French forces well to the north of what was later to be the 1919 Convention line. The Sarra Wells were the only important source of water between Koufra and Tekro and had been dug, at extreme cost, as recently as 1898, under the instructions of the Senoussi at Koufra. Clearly such an objective as the destruction of these wells ran counter to preserving and protecting this major north/south trade route and to the peaceful occupation of the region south of the Sarra Wells. The entirely defensive character of Colonel Largeau's establishment of posts in the borderlands could not be better illustrated than by this incident[59]. This destructive policy of Colonel Largeau is all too typical of the purely negative attitude which the French adopted in their move into the borderlands - with scant regard for the interests of the inhabitants.

5.43 Consulting the map, it is interesting to note the limited extent of the French presence in the borderlands at that time (Map LC-M 45). The two principal French military installations at Faya and Fada were below 18°N latitude. The post of Aïn Galakka lay almost exactly on 18°N. Gouro, the most northerly post (in Ounianga), lies below 19°N; and Ounianga Kebir is just north of 19°N. All these military installations lay between 18°E and 22°E longitude. As shown on the map, the area embraced by these posts comprised only a minor part of the borderlands. None of these posts lay even close to the so-called "Aouzou Strip", a term that of course was unknown at the time and only gained currency in the 1970s. Also of interest is the fact that all of the French posts established by the end of 1913 lay to the south of a true southeast line under Article 3 of the 1899 Declaration.

---

[56] It is to be noted that "occupation" of Ennedi was not part of the 8th company's mission.

[57] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 458. Emphasis added; French names for posts omitted. (A copy of this page is attached at Exhibit LC-M 13.)

[58] Ibid., p. 456 and fn. LM, Exhibit 26.

[59] See, LM, para. 5.116.

5.44 The post at Gouro - lying to the southeast of the Tibesti *massif* -, which Colonel Largeau first entered in December 1913, was established on 18 November 1914. It will be recalled that, at the end of 1914, Colonel (by then a General) Largeau made a proposal concerning Gouro, described in this way by French sources:

> "[L]e Général Largeau avait envisagé la possibilité de la remise volontaire de Gouro aux Senoussistes traitant avec eux comme avec une puissance organisée[60]."

This idea was revived in 1916 in the light of the French fear of Senoussi attacks from Koufra; and it was augmented by including the oases of Ounianga Kebir and Ounianga Saghir in order to lighten the load of defending Borkou[61].

5.45 The fact that in 1914, and again in 1916, the voluntary renunciation of Gouro and the two Ounianga oases was seriously entertained by the French commander and, in 1916, by the Administrateur du Territoire du Tchad (Merlet) illustrates the limited French interest in areas north of the main bases of Faya and Fada, as well as the difficulties encountered in maintaining these posts. The proposal, however, was rejected by the French Government in Paris for the reasons set forth in this abbreviated cable:

> "Gouverneur Général câble Ministre Colonies a transmis avec avis favorable proposition évacuer GOURO. Ministres Guerre et Affaires Etrangères ont fait objections formelles outre intérêt maintien pour négociations ultérieures avec ITALIE tout abandon poste en pays musulman serait suceptible [sic] de produire actuellement effet fâcheux et être envisagé comme victoire senoussiste. Indispensable maintenir occupation Gouro[62]."

---

[60] See, LM, para. 4.165.

[61] Dispatches from Merlet, Administrator of the territory of Chad, dated 24 December 1915, 20 March, 17 June and 1 July 1916: Exhibit LC-M 16.

[62] Dispatch of 17 June 1916; Exhibit LC-M 16.

5.46 Thus, with an eye to future negotiations over Libya's southern boundary with Italy after the War, and fearing that such a move would further encourage Senoussi resistance, the French Government rejected the proposal received from Merlet and Largeau. The official French thinking at the time was expressed by Merlet in his dispatch to General Largeau of 1 July 1916:

> "D'après information du CAIRE, MOHAMED EL IDRISSI comme première question ses pourparlers avec Italiens et Anglais abandon OUADAI par Français. Dans ces conditions évacuation GOURO serait interprétée par indigènes comme signe faiblesse. D'autre part abandon partiel BORKOU et TIBESTI pourrait provoquer revendication sans contre-partie Italiens se substituant après guerre à Senoussistes. Pour concilier intérêts opposés en cause, Guerre suggère confier garde postes BARDAI et GOURO à détachement partisans indigènes sous les ordres [d']un chef choisi par commandement territoire recruté dans la région pouvant nouer intelligence avec populations et ravitaillé périodiquement par colonne méhariste qu'on a proposé former FAYA Fin citation Estime a priori avec Commandant militaire que GOURO et OUNYANGA ne devant pas être évacués ne peuvent être tenus que par garnison tirailleurs et que dans état actuel des choses ne pourriez trouver dans population BORKOU partisans et chefs indigènes suffisamment braves et loyaux pour qu'on puisse leur confier postes français. Serais obligé nous faire connaître télégraphiquement votre avis à ce sujet[63]."

This dispatch points up the difficulties being encountered by the French in mid-1916 to maintain posts at Bardaï, Gouro and Ounianga Kebir. The principal reasons against abandoning these posts, as the local authorities wished to do, concerned maintaining a strong position in the light of the negotiations envisaged to take place with Italy as well as not to betray a sign of weakness to the hostile indigenous peoples and the Senoussi, who were clearly not interested in cooperating with the French.

5.47 The French military move into Tibesti started at the end of 1913, with a French column under Commandant Löfler, which departed from Bilma (in Kaouar), arriving at the plain of Zouar on 9 December, where a post was established. It will be recalled that until 1930 the administrative dividing line between the A.O.F. and the A.E.F. left a large part of Tibesti to the A.O.F. (Map

---

[63] Dispatch of 1 July 1916. Exhibit LC-M 16.

LC-M 46)[64]. Thus, unlike the French move into Borkou and Ennedi, which was accomplished by Colonel Largeau, reporting to the A.E.F., Tibesti was considered administratively to fall within the responsibilities of the A.O.F. It will be noted that Zouar lies on the southwest edge of the Tibesti massif; so the first real incursion of French forces into the heart of Tibesti occurred on 23 July 1914, when French forces moved into Bardaï, a move described in the following fashion by an official French source:

> "Après des hésitations, le Gouvernement français donna enfin l'autorisation de poursuivre et le 23 juillet 1914, nos troupes hissaient nos couleurs sur l'ancien fort Turc de Bardaï[65]."

5.48 Just as had occurred in 1914 in respect to the part of the borderlands comprising the regions of Borkou, Ennedi and Ounianga, so here at Bardaï in Tibesti, the local French authorities proposed almost at once (on 13 August 1914) to abandon Bardaï. The same French source, cited in the CM, described the situation as follows:

> "Le 13 Août 1914, les autorités de l'A.O.F. songaiont [sic] à abandonner Bardaï. Mais les instructions du Gouvernement français étaient formelles: 'Ne rien abandonner dans le Centre Africain'. Bardaï resta donc occupé. Malheureusement en Août 1916, devant les menaces d'attaques senoussistes qui lui parviennent très grossies, le commandant local au Tibesti évacue sans ordre nos postes, découvrant ainsi Bilma. Le Gouvernement français proscrit aussitôt la réoccupation de Zouar qui était en cours au moment des affaires d'Agadir (décembre 1916) mais qui ne se réalise pas[66]."

So it appears that, prior to August 1916, Zouar had been abandoned, and Bardaï was then vacated, ending the "éphémère" French presence in Tibesti.

---

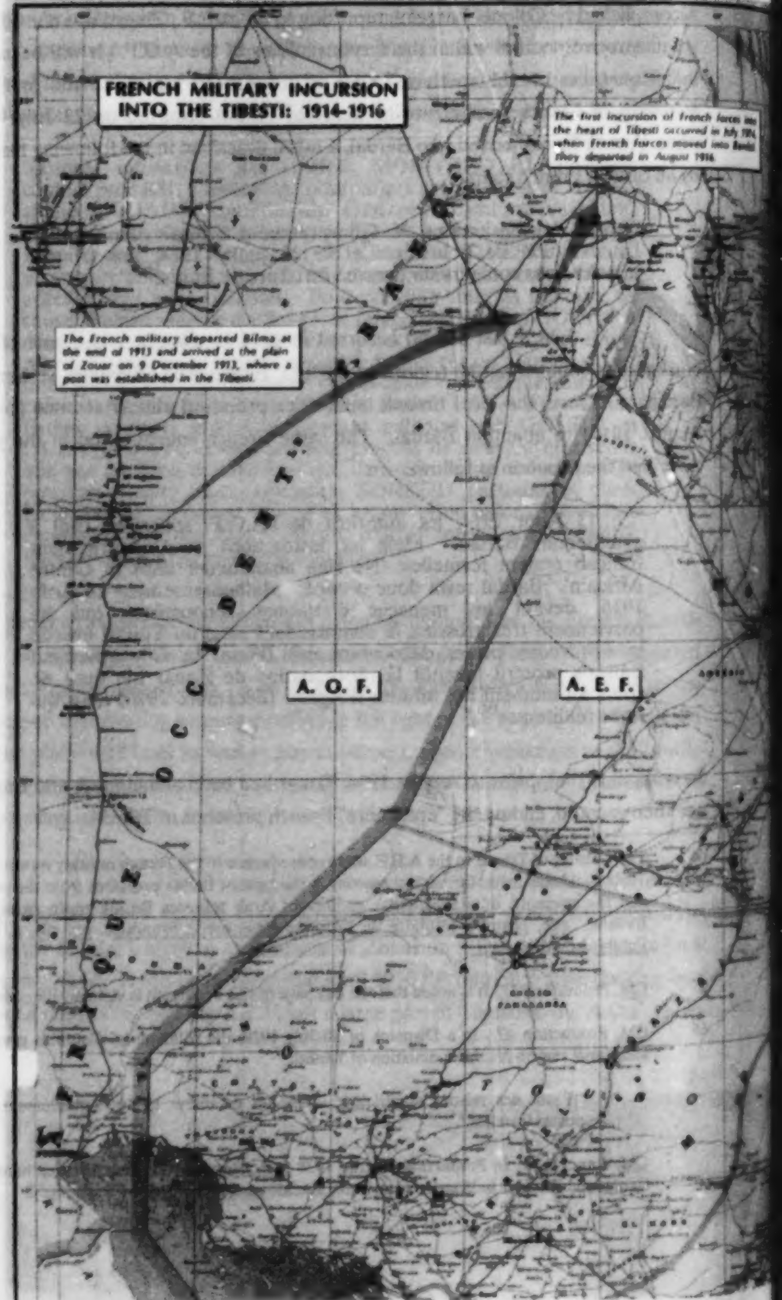
[64] The transfer of Tibesti to the A.E.F. was a consequence of the French military moves into Tibesti and was made for tactical reasons in the light of Italian pressures from the north and the presence of a substantial number of Arab refugees fleeing south from the Italians. See, Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 485. Exhibit LC-M 13.

[65] CM, Production 47. It is noted that the last page of this document is virtually illegible.

[66] CM, Production 47. In a Dispatch of 30 July 1929, the Minister of Colonies gave an additional reason for this evacuation of Tibesti:

> "[P]our des raisons matérielles, difficultés de relève et de ravitaillement des postes installés."

CM, Annex 114. In Production 25 (the 1928 Saint Report), the long distance between Bardaï and Bilma is indicated as a cause of abandonment.

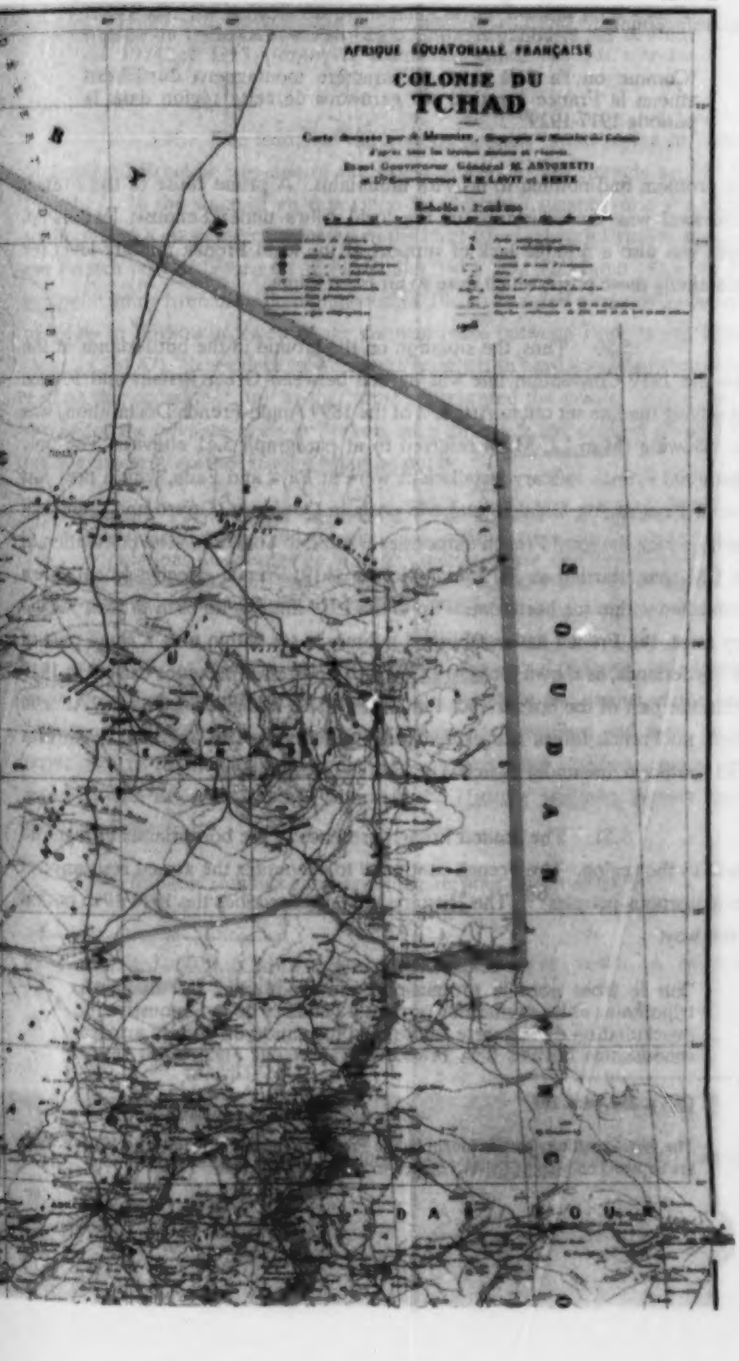


FRENCH MILITARY INCURSION INTO THE TIBESTI: 1914-1916

The first incursion of French forces into the heart of Tibesti occurred in July 1914 when French forces moved into Bardai; they departed in August 1916.

The French military departed Bilma at the end of 1913 and arrived at the plain of Zouar on 9 December 1913, where a post was established in the Tibesti.

LC-M 46


AFRIQUE ÉQUATORIALE FRANÇAISE
COLONIE DU
TCHAD
DE LIBYE
SOUDAN
DARFOUR

5.49 It is regrettable that the CM's account of this Tibesti episode is so disingenuous:

> "Comme on l'a déjà noté, le caractère montagneux du Tibesti amena la France à retirer ses garnisons de cette région dans la période 1917-1929[67]."

The problem had nothing to do with mountains. A prime cause of the French withdrawal was the resistance of the local tribes under Senoussi leadership. There was also a notable lack of support at the local French military level for maintaining these posts, which were so far from Bilma.

5.50 Thus, the situation on the ground in the borderlands at the time the 1919 Convention line was agreed between Great Britain and France (modifying the line set out in Article 3 of the 1899 Anglo-French Declaration) was the following (Map LC-M 44 referred to at paragraph 5.41 above). The only substantial French military installations were at Faya and Fada, with a post just west of Faya at Aïn Galakka and two posts in Ounianga (Gouro and Ounianga Kebir), which the local French authorities wanted to abandon. The contention in the CM that, starting in 1913 and prior to 1919, French effectivités had been established within the borderlands up to the 1919 line has no basis in fact. At the very most, the French had established military bases within only a small part of the borderlands, as shown on Map LC-M 44. No French presence existed in 1919 within the part of the borderlands that in the 1970s was given the name "Aouzou Strip"; no French forces had established a military post of any kind north of a strict southeast line under Article 3 of the 1899 Declaration.

5.51 The limited French presence in the borderlands brought no peace to the region. The French continued to encounter the armed resistance of the indigenous peoples[68]. The Histoire Militaire describes the 1914-1915 period in this way:

> "Sur le front nord la propagande allemande chez les dissidents tripolitains et les excitations turques à l'adresse de la Senoussiya, la proclamation de la guerre sainte et la formation de bandes armées senoussistes hostiles à la France n'avaient pas encore fait sentir

---

[67] CM, p. 251, para. 162.

[68] The various military battles fought by the French in the borderlands from 1914 onwards are depicted on Map LC-M 48, referred to at para. 5.60, below.

> leurs effets. Par contre les Toubbou pillards étaient singulièrement tentés par les convois de ravitaillement du Borkou ainsi que la reprise du trafic caravanier. Les opérations militaires sur ce front en 1914 et 1915 prirent la forme de contre-rezzous souvent heureux[69]."

5.52 The leader of the Toubou peoples in the region of Gouro, Mohammed Erbeïmi, was one of the prime movers in the struggle against the French[70]. In the wake of an expedition by Captain Lauzanne into the region south of Emi Koussi, inflicting losses on the local tribes, Sheikh Erbeïmi attacked the French post at Gouro on 18 November 1914. On 12 March 1915 "un fort rezzou" coming from the Abo region west of Tibesti attacked a convoy in the area of Yékia in Borkou just west of the caravan route between Borkou and Zigueï (Map LC-M 47). Senegalese soldiers were reported to have acquitted themselves well on this occasion[71], but as that route represented the unique crucial line of supply for the advance posts in Borkou, such an attack still offered grounds for serious concern. As the Histoire Militaire put it:

> "Malgré l'activité des méharistes[72], la sécurité des lignes de communications restait précaire. Les pillards trouvaient dans les populations dissidentes de la région montagneuse de l'Emi Koussi un milieu favorable pour la formation des rezzous et un refuge pour refaire les animaux et abriter les prises[73]."

5.53 During April-June 1915, Captain Lauzanne led another foray from Faya passing through Gouro and attacking the camps of the local "dissidents". The French column continued on north to Ouri and then, on the return trip to Faya, passed by Emi Koussi, where other dissident camps were attacked with apparent success, although the Histoire Militaire reports rather short-lived effects:

> "Ces brillants résultats garantirent la paix pour quelques mois[74]."

---

[69] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 460. (A copy of this page is attached at Exhibit LC-M 13.)

[70] Ibid.

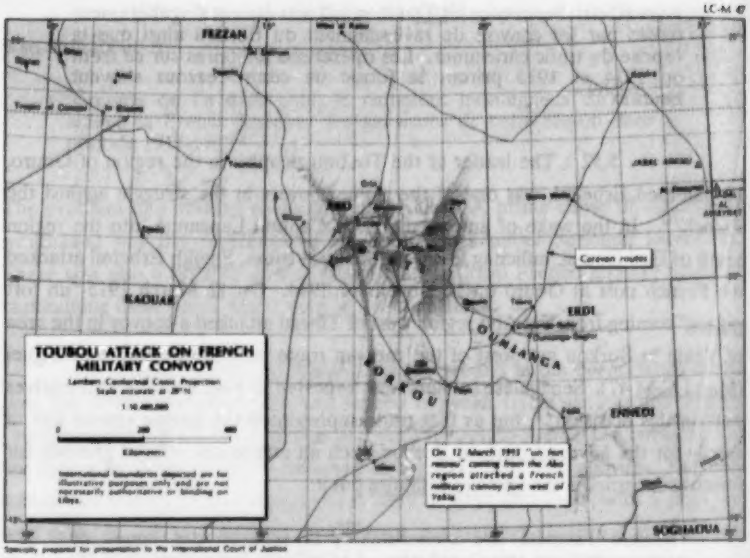
[71] Ibid., p. 461. Exhibit LC-M 13.

[72] Camel-mounted troops, normally Senegalese.

[73] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 462. Exhibit LC-M 13.

[74] Ibid., p. 464. Exhibit LC-M 13.

LC-M 47


FEZZAN
Tropic of Cancer
KAOUAR
JABAL ARKNU
AL AWAYNAT
Caravan routes
ERDI
OUNIANGA
BORKOU
ENNEDI
SOGHAOUA

TOUBOU ATTACK ON FRENCH MILITARY CONVOY

Lambert Conformal Conic Projection
Scale accurate at 20°N
1:10,400,000

Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.

On 12 March 1913 "un fort rezzou" coming from the Abo region attacked a French military convoy just west of Yebbi.

Specially prepared for presentation to the International Court of Justice

5.54 This prediction proved to be accurate: fighting continued in the borderlands, and rumours of fresh rezzous were circulating. Commandant Tilho, in Faya, decided to take action. In September 1915, he led a column of some 60 African troops to Emi Koussi and the Miski valley - "place de rassemblement naturelle des rebelles" - and "dissidents" were dispersed leaving behind prisoners and wounded[75]. It was during this expedition that Commandant Tilho prepared the first accurate map of Tibesti[76]. Fighting then broke out to the east of Tibesti at Tekro where:

> "... un rezzou de 120 fusils venu à Tékro fit craindre l'arrivée prochaine de forces senoussistes plus importantes[77]."

5.55 That the French were at this time very anxious - no doubt because of the continuing evidence of the resistance of the indigenous peoples to the minimal French military presence in the borderlands - not to start any direct conflict with the Senoussi is confirmed by the action taken by Merlet (the French Administrator in Fort Lamy - now N'Djamena) on 29 December 1915. On that date, Merlet instructed the French military commander (Commandant Tilho) strictly to interpret standing orders dating from 10 September 1915, to avoid provoking conflict with the Senoussi. In particular, he was not to advance into the region of Ouri to punish "dissident" Toubou, for then he would be in the north of Tibesti, almost on a level with the Sarra Wells and too far away from the post at Gouro[78].

5.56 Merlet's nervousness about the exposed French position in the borderlands is further confirmed by the warning he gave to the Governor General of the A.E.F. (in Brazzaville) in March 1916, that an "attaque du Borkou par troupe organisée et bien armée doit être envisagée"[79]. He reported that the two companies at Faya and Fada had been reinforced and indicated that under current instructions Gouro and Ounianga Kebir were to be evacuated in the event of attack by superior forces. He also noted the difficulties of reinforcing the isolated garrisons at Faya and Fada from Kanem:

---

[75] Ibid.

[76] See, LM, para. 5.250 and Map No. 67.

[77] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 466. Exhibit LC-M 13.

[78] See, Dispatch from Merlet dated 24 December 1915. Exhibit LC-M 16.

[79] Telegram from Merlet dated 20 March 1916. (A copy of the telegram appears at Exhibit LC-M 16.)

> "D'autre part Faya est séparé du Kanem par zone absolument désertique de cinq cents kilomètres avec une seule route par YEKIA. point. [sic] Les puits du Bahr el Ghazal creusés hâtivement se sont effondrés."

5.57 The incident at Tekro and fear of an imminent attack by Senoussi forces caused the French to take the offensive once more and attack the stronghold of Mohammed Erbeïmi. Sheikh Erbeïmi evaded the attacking French, but a Senoussi from Koufra was captured - "le khouan Bou Gheit venu de Koufra prêcher la résistance aux rebelles"[80]. The situation is summarized this way in the Histoire Militaire:

> "Dans les mois qui suivirent, les coups de mains des dissidents se multiplièrent, d'autant plus audacieux que la menace senoussiste et forienne se précisait. Les unités se rassemblèrent pour faire face aux fortes harkas signalées, les patrouilles de police furent suspendues[81]."

Reinforcements from Ouadaï and Kanem were dispatched to Faya. In Ennedi, meanwhile, "les dissidents rendus plus agressifs par les bruits tendancieux répandus" were keeping the méhariste troops busy. In July 1916, a camp near Faya was attacked. Then, in October 1916, Erbeïmi reappeared at the head of 800 men. The French 7th company destroyed part of the band, wounding Erbeïmi, who barely escaped. By the end of 1916, the situation was the following:

> "En résumé, fin 1916, la situation sur cette frontière restait sinon grave tout au moins inquiétante[82]."

5.58 While this fighting was going on in the borderlands, well to the south (around 12°N latitude) the Sultan of Sila and the Sultan of Darfour revolted against the French, having been "[s]ecrètement travaillés par les

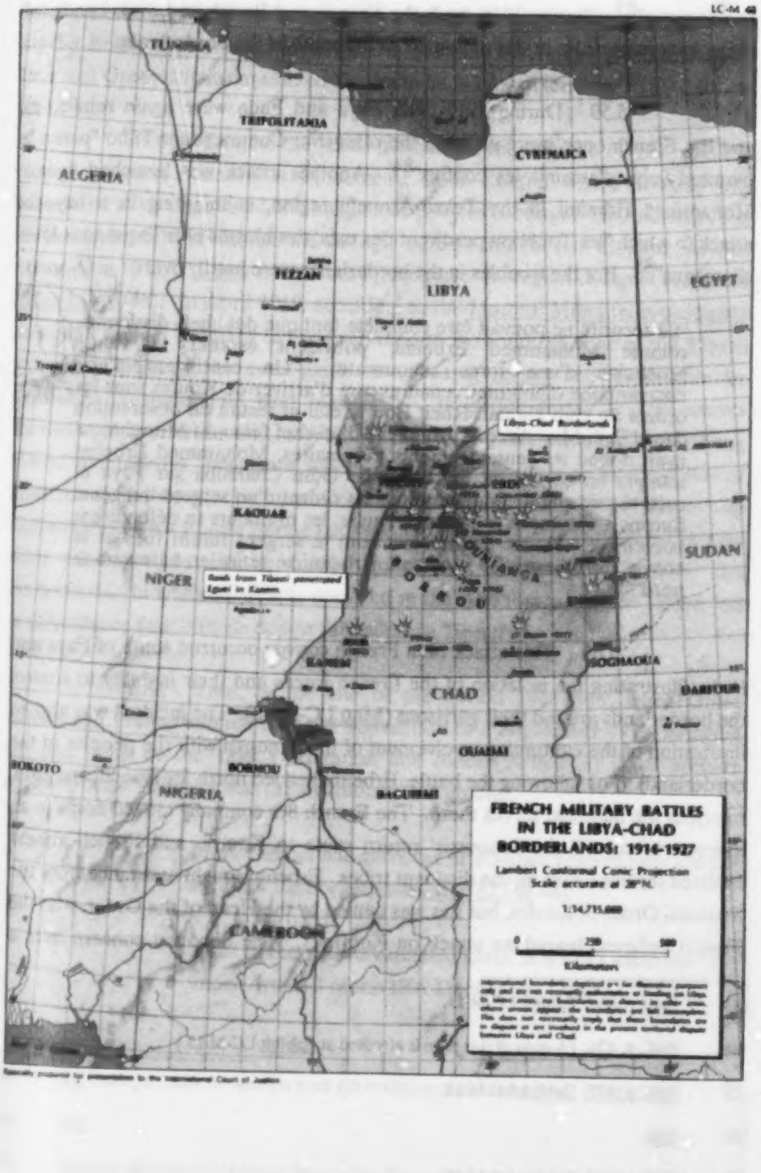
---

[80] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 467. (A copy of this page is attached at Exhibit LC-M 13.)

[81] Ibid.

[82] Ibid.

LC-M 48


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
Tropic of Cancer
Libya-Chad Borderlands
KAOUAR
TIBESTI
ERDI
OUNIANGA
BORKOU
SUDAN
NIGER
Raids from Tibesti penetrated Egueï in Kanem
KANEM
CHAD
BOGHAOUA
DARFOUR
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
FRENCH MILITARY BATTLES IN THE LIBYA-CHAD BORDERLANDS: 1914-1927
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:14,715,000
0
250
500
Kilometers

Specially prepared for presentation to the International Court of Justice

Senoussistes"[83]. During 1916, both the French and British had their hands full trying to restore order in this region far to the south of the borderlands.

5.59 During 1917-1918, Faya and Fada were again reinforced, and the French once more went on the offensive; Commandant Tilho "pensa le moment venu d'assainir les confins"[84]. Another attack was launched against Mohammed Erbeïmi in the Tekro-Arouelli region, culminating in a bayonet attack in which "les Toubbou perdirent des tués, des blessés et presque tous leurs chameaux"[85]. But the troubles in the borderlands were hardly over:

> "La sécurité ne pouvait être complète tant que des chefs dissidents, comme Mohammed Erbeïmi, pouvaient espérer la venue prochaine d'une force senoussiste. Un contingent d'une cinquantaine d'hommes venait encore d'arriver de Koufra sous les ordres du chef khouan Rheit Bou Kreïm et restait en observation dans l'Erdi-Ma. Avec la complicité d'un chef félon du Mortcha qui avait donné les renseignements nécessaires, Mohammed Erbeïmi attaqua un convoi de mil dirigé de Oum Chalouba sur Faya et escorté par quinze tirailleurs sous les ordres d'un sergent indigène. Surpris à Goumeur le 7 mars à l'aube, les tirailleurs se défendirent bravement. Douze d'entre eux dont le sergent furent tués et le convoi fut enlevé. Le coup fait, Erbeïmi se retira en hâte vers le nord[86]."

5.60 This attack on a French convoy occurred south of Faya and Fada, illustrating the isolation of the French forces and their inability to control the borderlands around their garrisons (Map LC-M 48). The incident was also an illustration of the continuing involvement of the Senoussi with the peoples of the borderlands. For following the battle, Erbeïmi headed north for Ennedi and Erdi, to rejoin the Senoussi forces there. The French 8th company moved north in an attempt to cut off the Senoussis' return route to Koufra, and French attacks inflicted serious losses on the dissident tribes. Erbeïmi sought assistance from the Senoussi Order in Koufra, but this was denied by the Head of the Order, who the French believed feared an attack on Koufra[87]. The Senoussi concern over a

---

[83] Ibid., p. 466. Exhibit LC-M 13.

[84] Ibid., p. 476. (A copy of this page is attached at Exhibit LC-M 13.)

[85] Ibid., p. 477. Exhibit LC-M 13.

[86] Ibid.

[87] Ibid., p. 479. Exhibit LC-M 13.

French attack on Koufra is borne out by contemporary British documents[88]. It led the British Government to confirm in 1914 the assurances given to Italy in 1907 that Great Britain considered Koufra to lie in Libyan territory[89].

5.61 Despite the losses inflicted on them by the French, and the refusal of overt Senoussi reinforcements from Koufra, whose security was considered to be threatened, the indigenous peoples continued their resistance in the borderlands, even though the strength of their attacks had diminished. For example, in 1918, a rezzou from Tibesti penetrated the region of Eguel in Kanem (Map LC-M 48). In April 1919, according to the Histoire Militaire, a méhariste section of the 7th company in Faya ventured to the southern edge of the Tibesti massif and pursued the avant-garde of a Tuareg rezzou and "fit avorter les agressions combinées de cinq rezzous"[90]. It is noteworthy that resistance continued long after the end of World War I: still further evidence that this was indeed spontaneous, indigenous action - not simply the strategic manipulation of disaffected individuals by the Central Powers attempting to create an embarrassment for France during the European War. In July 1919, other attacks were conducted by French troops from Faya against "dissidents" in the borderlands. In addition, attacks occurred in the Abo region west of Tibesti "où la surveillance était difficile depuis l'abandon du Tibesti"[91].

5.62 Thus, at the end of the period 1913-1919, when Great Britain and France entered into the Convention of 8 September 1919, swinging the end point of the 1899 Declaration line (under Article 3) 4° of latitude northward, the following was the situation on the ground:

- French forces had garrisons or advance posts in only a small sector of the borderlands (Map LC-M 44);

- None of these posts extended north of a strict southeast line under Article 3 of the 1899 Declaration (Map LC-M 45);

---

[88] See, Foreign Office documents from the British archives dated 1914. Exhibit 17.

[89] Ibid.

[90] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 483. Exhibit LC-M 13.

[91] Ibid.

- The French were in no way in control of the borderlands region extending up to the 1919 Line;

- Such French "occupation" as existed in the area was anything but peaceful, and it was entirely military.

5.63 In the part of the CM that deals with French colonial *effectivités* between 1913 and 1919[92], no attempt is made to demonstrate that the French military invasion of the borderlands constituted, by 1919, the "continuous and peaceful display of the functions of State" up to the 1919 line. Chad's case in this respect rests on such unproven assertions as this:

> "La France, quant à elle, occupa le B.E.T. en 1913-1914, et depuis lors -- sauf une brève parenthèse pour ce qui est du Tibesti -- ne cessa pas d'y exercer son autorité effective[93]."

It has been demonstrated above, relying on the official French military history of relevant events and on documents introduced by Chad, that this assertion is incorrect in many respects. Furthermore, while the CM ignores this aspect of the activities of the French military in the borderlands during this period, it certainly cannot be said to have been a peaceful display of the functions of State. There was continuous fighting from the start to the end of this period and even beyond (Map LC-M 48). The indigenous peoples and the Senoussi Order never accepted the French presence in their lands.

5.64 Rather than addressing these sorts of facts, the CM relies on other elements: (i) French legislation; (ii) French civil and military administrative acts during the period (to which only four lines of the CM are devoted and for which no evidence is produced); and (iii) the alleged confirmation of French *effectivités* by Italy. The last point has been dealt with elsewhere[94]. Only French legislation during the period will be considered here.

---

[92] CM, pp. 254-261, paras. 175-203.

[93] CM, p. 254, para. 178.

[94] See, para. 4.199, et seq., above.

5.65 The first French legislative enactments affecting the areas south of the Libya-Chad borderlands were discussed in the LM[95]. The CM does not mention at all the basic French decree of 5 September 1900 establishing the "circonscription spéciale" called the "territoire militaire des pays et protectorats du Tchad". The significant thing about this decree is that it bears out what has been said above - that what was considered to be "Chad" lay south of the borderlands, which were regarded in military terms as the "northern front". The 1900 decree mentions no regions to the north of the Chad basin and its tributaries, other than Baguirmi, Ouadaï and Kanem, as falling within "les pays" placed under alleged French domination under the 1898 Anglo-French Convention and 1899 Declaration[96].

5.66 The CM also ignores the subsequent 1902 decree, beginning its discussion only with the 1906 decree. (The relevance of the other decrees issued between 1910 and 1915 mentioned in the CM is not explained.) Included within the "military territory of Chad" under the 1906 decree were:

> "... au nord de l'Oubangui-Chari l'ensemble des régions placées sous l'influence de la France en vertu de conventions internationales et ne dépendant pas de [the A.O.F.][97]."

This definition excluded, first of all, most of Tibesti, which had been administratively allocated to the A.O.F., until 1930 (Map LC-M 46 referred to at paragraph 5.47 above). Secondly, on no account could any region north of 15°N latitude be considered to have been "placed under the influence of France" under the 1898 and 1899 Anglo-French agreements, as has been amply shown above in Part IV as well as in the LM, Part V.

5.67 Thus, the decrees adopted by France prior to 1919, on their face, failed to embrace the borderlands, and they confirmed the military conception at the time of this sector being a northern front whose role was to protect "le Tchad utile". Even had the decrees embraced what the CM calls the "B.E.T.", it does not follow that such an assertion of authority could have been binding on the Ottoman Empire (prior to the 1912 Treaty of Ouchy) or on Italy

---

[95] See, LM, paras. 4.115-4.119

[96] Of course, the decree was wrong in referring to these lands as within French "domination" under these treaties. See, LM, para. 4.117.

[97] CM, p. 256, para. 188. Underlined in text.

(after 1912). The CM suggests these legislative acts constitute "une preuve éloquente du fait que la France considérait le B.E.T. comme un des territoires africains soumis à son autorité souveraine"[98]; but the 1900, 1903 and 1906 decrees were all issued at a time when it was the Ottoman Empire, not Italy, that had sovereignty over Tripolitania-Cyrenaica and hence held any rights and titles over their hinterland. The Ottoman Empire had vigorously asserted these rights and titles and repeatedly disputed any French claims in the area. The decrees may have "eloquently" expressed France's aspirations, but they were not matched by action on the ground. For it was not until the Ottoman withdrawal in 1913 that French forces moved north of 15°N latitude, the de facto line between their forces in the meantime being respected by the local French and Ottoman authorities.

5.68 The only other argument left to Chad is that Italy confirmed the French effectivités in the borderlands. Aside from the defects in this contention, dealt with elsewhere[99], it is evident that Chad cannot evade the burden of proving the basis of French title, on which it relies, by the indirect means of contending that Italy recognized such title. There was no such Italian recognition, as has been shown above; but the basic premise advanced by Chad is false. Italy could not recognize a state of facts that did not exist, particularly when the Italians had very limited knowledge of the French activities in the borderlands in the period during World War I and just after it.

SECTION 4. The Period 1920-1935

5.69 Until 1929-1930, the situation on the ground in the borderlands did not appreciably change, although the Histoire Militaire reveals that by 1930 the post at Gouro, previously manned by the 7th company at Faya, had been eliminated and replaced by one at Oum Chalouba (400 km further south, below 16°N). As to the 8th company at Fada, the only post it manned to the north was Ounianga Kebir. This post had ceased to serve its original purpose of controlling the caravan trade, for the indigenous peoples had rerouted the caravan traffic from Cyrenaica to Ennedi and Ouadaï through Ounianga Saghir, where there was no French post[100]. This led the French authorities in 1933 to decide to establish a post at Tekro, an event that led to the Tekro incident with Italy[101], which will be dealt with below after considering the intervening French occupation of Tibesti.

---

[98] CM, p. 256, para. 185.

[99] See, para. 4.199, et seq., above.

[100] See, Histoire Militaire de l'Afrique Equatoriale Française, op. cit., pp. 486-487. (A copy of these pages is attached at Exhibit LC-M 13.)

5.70 Turning again to Tibesti, it has been seen that the two posts of Zouar and Bardaï, unenthusiastically established and manned starting in 1914, were abandoned by the French in August 1916. Until 1929, there were no French military installations in this part of the borderlands. The only French activity in Tibesti consisted of occasional "tournées" through the region by camel-mounted méhariste troops from Bilma under the command of Captain Rottier and, apparently, similar "tournées" into Tibesti emanating from Faya as well (Captain Aubert). The situation was authoritatively described in these words in a "Note du Secrétariat Général du Conseil Supérieur de la Défense Nationale" of 12 December 1928:

> "Le TIBESTI n'est pas actuellement occupé en permanence, il est parcouru de temps en temps par nos unités méharistes, notre ligne de couverture englobant le Borkou, laisse le Tibesti en dehors - Toutefois sur les demandes réitérées du Gouverneur Général de l'A.E.F., un poste d'une compagnie doit être installé en 1929 à Zouarka au sud de Bardaï[102]."

5.71 The CM presents the situation in Tibesti differently:

> "Comme on l'a déjà noté, le caractère montagneux du Tibesti amena la France à retirer ses garnisons de cette région dans la période 1917-1929. Pendant ce laps de temps, le Tibesti ne fut pas occupé par la France d'une manière continue, mais parcouru régulièrement par des unités méharistes[103]."

This gives a misleading impression[104]. The reconnaissance and surveillance missions were intermittent, not regular. There is a record of only a handful of such missions during this 13-14 year period. The first reported mission was a contre-rezzous expedition by Captain Rottier (from Bilma) in February-March

---

[101] The French post at Ounianga Kebir was evacuated in 1940. The post at Tekro, established in December 1933, was abandoned in April 1941. Exhibit LC-M 18 contains an extract from the "Historique du poste de Tekro".

[102] CM, Annex 112.

[103] CM, p. 251, para. 162.

[104] See, para. 5.45, et seq., above, for the real reasons why the Tibesti posts were evacuated in August 1916, which had nothing to do with the region's mountainous terrain.

1922 into the Abo region west of the Tibesti *massif*[105]. The troops under French command carried out reprisals against the "irréductibles" of Abo, passing through Wour and Bardaï on their return to Bilma (*Map LC-M* 48). This was not a regular "tournée" at all, but the taking of reprisals against "dissidents" in the region of Abo. The incident brings out the fact that resistance by the indigenous peoples and fighting between them and the French had not ended.

5.72 During June-September 1923, a second French expedition under Captain Couturier visited Guezenti and Aouzou, returning via the Miski valley to Faya. The long report of this trip is full of sketches and data comprising geographical observations, but there is no mention of the indigenous peoples or the political situation in Tibesti at all[106]. Evidently this was essentially a scientific undertaking. Then in January 1929, Lt. Mear led a patrol through parts of Tibesti giving particular attention to the Bardaï - Koufra route and immigration along it. The only other documented military missions were the separate "tournées" of Captains Rottier and Aubert in 1929, mentioned above. The purpose of the overlapping missions was expressed as follows in a dispatch of 17 April 1929 from the French Minister of Colonies to the Minister of Foreign Affairs:

> "Ces tournées doivent avoir pour résultat de nous mettre en possession de renseignements précis sur la répercussion des opérations italiennes sur nos territoires et de permettre une organisation plus serrée de la surveillance de la frontière[107]."

The *CM* does refer to a scientific mission proposed to be undertaken in the Tibesti area in 1929. Once again, the reasons behind the mission related to Italy's moves in the regions north of Tibesti. As expressed in a dispatch of 22 July 1929[108] from the Minister of Foreign Affairs to the Resident General of Tunis:

> "L'activité récente des Italiens en Tripolitaine et les revendications formulées par certains de leurs organesme [*sic*] paraissent accroître encore l'utilité et l'urgence d'une mission d'exploration scientifique dans cette région[109]."

---

[105] *See*, *CM*, Production 18.

[106] *See*, *CM*, Production 21.

[107] *CM*, Production 27.

[108] *See*, *CM*, p. 248, para. 149.

[109] *CM*, Production 29.

5.73 Thus, several conclusions emerge from this evidence concerning Tibesti in the period from 1919 to 1930:

- The several "tournées" were motivated by reasons other than the occupation of the region, such as retaliation for rezzous and anxiety over the effects of the Italian moves southward; their purpose was reconnaissance and surveillance, not peaceful settlement, nor any concern for the protection or enhancement of the indigenous peoples;
- Fighting between the indigenous peoples and the French continued (Map LC-M 48);
- As 1930 approached, the French grew mindful of the future negotiations to be undertaken with Italy over the boundary, and French moves were carefully calculated in relation to these negotiations.

The minimal contacts with the local peoples of Tibesti during this time and the continuing unrest there are brought out in Captain Aubert's 1929 report, where he refers to the region of Aouzou in these terms:

> "... région qui, depuis l'évacuation du Tibesti, n'a été visitée qu'une seule fois en 1923, dont les habitants n'ont jamais été soumis à la moindre action politique et d'où sont sortis, surtout en 1926 et 1927, de nombreux rezzous sur le Nord de l'Ennedi[110]."

5.74 The CM attributes the French decision to occupy Tibesti to the fear that after Italy conquered Fezzan it would send troops south "pour s'emparer du Tibesti"[111]. But the decision was also taken in the light of the unresolved question of Libya's southern boundary, as well as the immigration into Tibesti of large numbers of peoples fleeing from the Italian forces that had moved south to the area of Koufra in Cyrenaica and to Fezzan. It will be recalled that from 1919 onwards, Italy and France had been engaged in negotiations over this frontier. In 1928-1929 alternative proposals had been formulated and even formally exchanged. France's move into Tibesti was directly related to these circumstances; and Italy protested the French move, as the evidence shows and as Chad concedes[112].

---

[110] CM, Production 45. Emphasis added.

[111] CM, p. 248, para. 150.

5.75 Chad has produced with its Memorial a number of documents that bear out what has just been said above. In an impassioned appeal of 9 March 1929 to the Governor General of the A.E.F., the Lt. Governor of Chad sounded the alarm over reports that in conversations with Italy, in return for concessions to be made to France in Tunisia, there was being considered "une rectification de la frontière du Sud de la Tripolitaine"[113]. In a statement that clearly distinguished between Chad and Tibesti, he warned:

> "[L]'Italie sait qu'occuper le Tibesti, c'est préparer l'occupation du Tchad, et que le Tchad vaut d'être occupé[114]."

This dispatch argued that the unity, security and future of France's colonial African Empire was threatened by proposals, then current, to recognize Tibesti as part of Libya.

5.76 The French Ambassador in Rome (Beaumarchais) advised in a dispatch of 20 February 1930 that in order to blunt Italian claims to the borderlands -

> "... nous devons actuellement faire acte de présence dans les points avoisinant la frontière des territoires libyens de manière à enrayer toute velléité italienne d'occuper, en notre absence, des parcelles des territoires jadis soumis à la domination turque et où les coloniaux italiens se prétendent appelés par droit de succession[115]."

Ambassador Beaumarchais was at the time in the centre of the Franco-Italian negotiations concerning Libya's southern boundary, and he well appreciated the interconnection between moves on the ground and the on-going negotiations[116]. So did Italian Ambassador Manzoni in Paris, who advised Rome to express reservations concerning reported French Government instructions following Captain Aubert's expedition into Tibesti, to occupy three centres in Tibesti: Bardaï, Wour and Sherda[117].

---

[112] *See*, fn. 124, below.

[113] *CM*, Production 26.

[114] *Ibid*. Elsewhere in this same dispatch it is noted that: "La route des envahisseurs du Tchad a toujours passé par le Tibesti."

[115] *CM*, Production 35.

[116] *See*, *e.g.*, *LM*, para. 5.271.

5.77 On 29 April 1930, the Minister of Colonies requested the Governor General of the A.E.F. to come up with a plan before some mishap by the Italians should "affirmer la précarité de notre occupation ..."[118]. What the French authorities had in mind - and this was issued as an order to the military commander of Chad[119] - was to create a "zone à surveiller" consisting of a "ligne de surveillance"[120] (Map LC-M 49). Where the line intersected the north/south routes it was to be manned by a half-section of méharistes[121]. Behind this line, posts were to be established at Wour, Bardaï, Aouzou, Gouro and Ounianga Kebir, backed up by posts at Sherda, Faya and Fada. The French military instructions of 1930 contained these interesting directions and remarks:

> "Pour le cas où la ligne de surveillance qui vous est indiquée ne se prêterait pas à une occupation, vous déterminerez d'entente, avec le Gouverneur du Tchad, la ligne des premiers points d'eau à tenir au sud de la frontière tripolitaine pour barrer toute infiltration[122]."

The French instructions added that:

> "La zone à surveiller a un développement de plus de mille kilomètres. ... La frontière elle-même n'a jamais été délimitée et, partant, son tracé n'est signalé par aucun repère géographique ou géodésique[123]."

5.78 The implementation of these orders resulted in French military posts being established north of a strict southeast line under Article 3 of the 1899 Declaration. This provoked an immediate Italian protest on 19 May

---

[117] See, CM, Production 36.

[118] See, CM, Production 46.

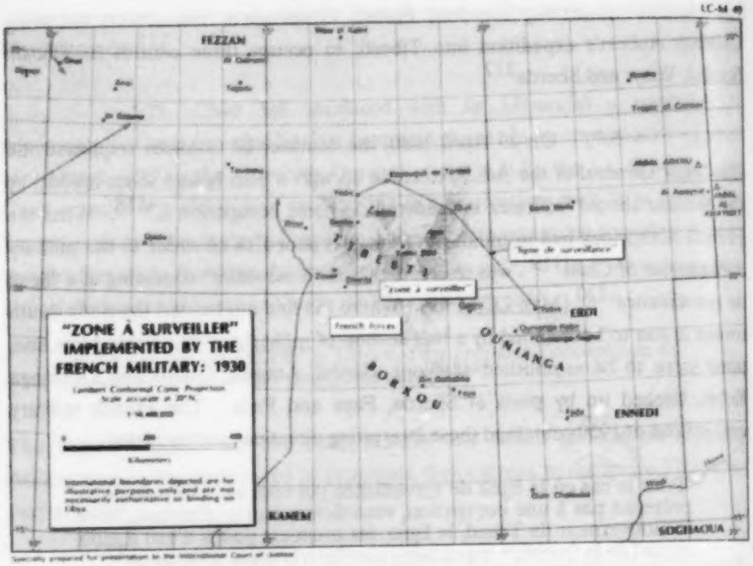
[119] By this time, Tibesti had been switched administratively from the A.O.F. to the A.E.F.

[120] Michitaba, Yédri, Kayougué de Tardoé, Oyowrou, Ouri, Tekro.

[121] CM, Annex 128, a report on the French occupation of Tibesti 1930-1931. See, also, Production 46, which is the exact same document.

[122] Ibid.

[123] Ibid. Emphasis added.


LC-M 40
"ZONE À SURVEILLER"
IMPLEMENTED BY THE
FRENCH MILITARY: 1930
Lambert Conformal Conic Projection
Scale accurate at 20°N.
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.
FEZZAN
TIBESTI
BORKOU
OUNIANGA
ERDI
ENNEDI
KANEM
SOGHAOUA
Tropic of Cancer
"ligne de surveillance"
"zone à surveiller"
French forces

Specially prepared for presentation to the International Court of Justice

1930[124], and protests from the Italians were to continue. Nevertheless, the CM attempts to make out a case of Italian confirmation of French effectivités from the various dispatches and the notes verbales exchanged in 1930 and 1931, including those relating to the incident created by General Balbo's overflight of part of the borderlands in 1931. An analysis of these documents reveals there was no such Italian recognition at all.

5.79 To pick just one example, at pages 270-271 (para. 241), the CM quotes from an Italian note to the French Government of 11 July 1931 in which the Italian Foreign Minister made this statement in discussing the Balbo overflight:

> "This being so and since the frontiers in these regions between French Equatorial Africa and Tripolitania have not yet been delimited (ne sont pas encore delimitées), it would be difficult to ascertain precisely whether His Excellency General Balbo always stayed within the limits of Italian territory during his flight as was his intention[125]."

The CM sets out a portion of an internal French dispatch, in which the Quai d'Orsay indicated that Italy's response in this note of 11 July 1931 was substantially acceptable:

> "La réponse de M. Grandi, d'ailleurs conçue en termes très courtois et conciliants, ne contient aucune affirmation qui appelle la contradiction. Il est exact notamment que les frontières entre l'Afrique Equatoriale Française et la Tripolitaine n'ont pas été 'délimitées' sur le terrain bien qu'elles aient été définies par les accords franco-anglais de 1899 et 1919. Dans ces conditions, je crois qu'il y aurait plus d'inconvénients que d'avantages à prolonger la discussion avec le Gouvernement italien au sujet du raid Balbo[126]."

If the underlined portions of the extracts quoted above are compared, it can be seen that the Quai d'Orsay's summary totally changes the meaning of the Italian note: "have not yet been delimited" ("ne sont pas encore délimitées") is quite different from "n'ont pas été 'délimitées' sur le terrain". This incident reveals the contrary of what the CM claims; the incident ended in a backdown by France to avoid a confrontation with Italy over Libya's southern boundary. The Quai d'Orsay changed the meaning of Italy's note to mean, in effect, no "demarcation" existed; and on this basis the French Government conveniently found the Italian note satisfactory[127].

---

[124] See, LM, para. 5.273, et seq., and French Archives Annex, p. 393. At p. 269, para. 236, et seq., the CM acknowledges Italy's protests.

[125] See, CM, pp. 270-271, para. 241. The English translation of the 11 July 1931 note is attached at Exhibit LC-M 19, p. 7, along with other correspondence relating to the Balbo overflight incident.

[126] CM, p. 271, para. 242, and Production 49. Emphasis added.

5.80 A second aspect of the French military occupation of Tibesti, starting in 1930, relates to the flight south into the borderlands of peoples escaping from the Italian armies in Fezzan and southern Cyrenaica. It appears that these refugees started arriving in Tibesti in early January 1929 and included members of the Warfella and Qadhadfa tribes[128]. This was not unknown territory to these peoples, for members of both tribes had nomadised with the Awlad Sulaiman in the countries north of Lake Chad from the 19th Century on, as witnessed by Nachtigal[129].

5.81 The first objective of the French was to settle these peoples far away from the line of the 1899 Declaration. The instructions were to "[l]eur assigner résidence surveillée et placée loin de toute frontière"[130]. The Qadhadfa were allowed to settle between Aïn Galakka and Faya, in Borkou; but the Orfella were sent to Kanem. By April 1930, a number of the Qadhadfa had left Borkou to return to Cyrenaica[131]. The second objective - also based on security reasons - was to disarm them[132].

---

[127] To mention another example, at pp. 265-266, paras. 222-223, the CM quotes from what is described as a note of 15 May 1930 from the Italian Embassy in Paris. No indication of the address is given or any citation to an annexed or furnished document; and Libya has not found such a document among Chad's Annexes and Productions or elsewhere. Yet this mystery document is said to have this significance: "[p]ar cette note, l'Italie admettait donc que la bande d'Aozou était sous l'autorité militaire effective de la France." Of course, inter alia, the term "Aouzou Strip" was not invented until the 1970s; and Italy's firm protests against French moves into Tibesti refute such an undocumented contention.

[128] See, CM, Production 27 and Annex 119. In April 1929, the size of this immigration was estimated at 200 tents and 1,100 people.

[129] See, LM, para. 4.86.

[130] CM, Annex 121.

[131] See, CM, Annex 119.

[132] See, Histoire Militaire de l'Afrique Equatoriale Française, op. cit., 486. Exhibit LC-M 13; and CM, Annex 121.

5.82 The important point about this exodus southward in the face of the Italian advance is that it was a major factor in provoking the French occupation of Tibesti. As the Histoire Militaire expresses it:

> "Pour éviter la formation au Tibesti de rassemblements non contrôlés, l'occupation de ce massif fut décidée ...[133]."

It was this influx of peoples from the north that led to the establishment of the line of surveillance and the military posts in Tibesti just mentioned above in order to -

> "... neutraliser le plus rapidement possible les belligérants indigènes qui pourraient se réfugier chez nous ...[134]"

5.83 This description of French military activity, whose object was to disarm the groups or tribes fleeing southwards from the Italian forces, leads the CM to conclude that Italy acknowledged that the "Aouzou Strip" was under the effective military authority of France[135]. This conclusion apparently is based on the allegation that the Italian authorities had approached France with the request that the people fleeing southwards be disarmed and, thus, prevented from organizing attacks against Italy from within the area controlled by France[136].

5.84 As has already been noted, the CM has not provided acceptable documentary evidence of statements attributed to Italy. This same failure applies to the principal French documents cited here by Chad (CM, Annex 119). They consist of texts of telegrams, or extracts therefrom, whose source is unidentified and whose authenticity cannot be verified.

5.85 However, even setting aside this point, which Libya regards as of major importance, it must be noted that other defects exist concerning these documents. For example, there is no indication where the events they describe occurred. The French documents speak of refugees "arrivés en territoire français" or "dans la région d'Aozou", or "de Tekro et Aronelli", without any further details. But it is above all an Italian document quoted from in the *CM*[137] - which according to Chad implies recognition by Italy of French authority - that suffers from a total lack of precision. In the passage quoted from this document is a request for action by France against "dissidents Tripolitains" who, according to certain information, "... seraient au sud de la ligne de démarcation de la sphère d'influence française", in the event such persons were to penetrate into "territoire africain français". How can the *CM*, on such a vague basis, venture to assert that Italy recognized anything whatsoever with respect to any French authority that might have been exercised in the "Aouzou Strip"? Indeed, the document in question neither identifies the "ligne de démarcation de la sphère d'influence française" (is it the strict southeast line? or the line shown on the *Non-Annexed Map*? or the 1919 line?) nor does it state that this line is the frontier of the "territoire africain français". Finally, the document quoted from is not identified with reference to any annex or production, so it must be taken on faith that such a document exists.

---

[133] Histoire Militaire de l'Afrique Equatoriale Française, op. cit., p. 485. (A copy of this page is attached at Exhibit LC-M 13.)

[134] CM, Annex 128.

[135] See, CM, pp. 226-227, paras. 223 and 228.

[136] See, CM, pp. 265-266, para. 222.

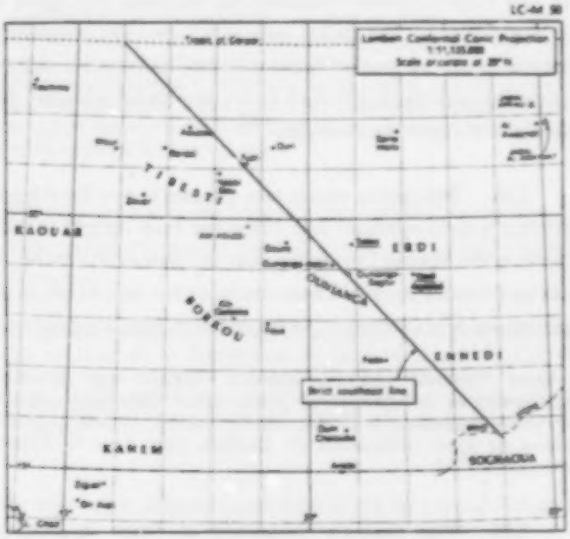
5.86 But even if, *arguendo*, Italy had asked France to disarm any refugees it intercepted in the borderlands, this would certainly not have implied any recognition of French sovereignty over the area. It should not be overlooked that from the moment that France decided, in 1929, to return to the northern part of the borderlands from which it had departed two decades earlier, Italy made constant, explicit protests, asserting that those territories belonged to Libya[138]. In other words, when it noted the scattered presence of French troops in areas that it considered as its own, Italy contested the legality of such presence, pointing out that French military posts had been placed in areas where, Italy believed, they had no right to be. For this reason alone, Italy, while maintaining its position on the merits and awaiting settlement of its territorial dispute with France, had every right to require France in the meantime to do everything possible (depending on the level of control actually exercised in the various areas) to ensure that the territory in question was not used in such a way as to prejudice Italian interests. In a well-known *obiter dictum* the Court has clearly stated that this kind of obligation is imposed on a State by virtue of the simple fact that it exercises some type of control over a territory, even though it has no valid legal title to such territory[139]:

---

[137] *CM*, p. 265, para. 222

[138] *See*, para. 5.88, *et seq.*, below.

> "The fact that South Africa no longer has any title to administer the Territory does not release it from its obligations and responsibilities under international law towards other States in respect of the exercise of its powers in relation to this Territory. Physical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States."



5.87 On 17 January 1931, Italian troops occupied Koufra[140]. On 20 June 1931, the Italians started work on the repair and maintenance of the Sarra Wells[141]. In 1935, an Italian patrol paid a visit to Tekro. This led the

---

[139] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 54, para. 118.

[140] The Italian occupation of Koufra provoked a new influx of peoples into the borderlands. See, CM, Production 28.

[141] This Italian activity to restore the Sarra Wells contrasts sharply with the French expedition in 1914 to the Wells to study how to destroy them. See, para. 5.42, above.

French to decide to establish a post in Tekro, leading to the Tekro incident, which is dealt with briefly in the LM[142]. The location of Tekro in relation to the strict southeast line under Article 3 of the 1899 Convention is portrayed on Map LC-M 50.

5.88 The incident over Tekro was the culmination of the exchanges of notes between Italy and France, brought on by the Anglo-French Convention of 8 September 1919, and of the continuous negotiations between the two Powers over Libya's southern boundary that had been in progress ever since the end of World War I. The Italian note of 9 June 1934 protesting France's establishment of a military post at Tekro was also the last of a series of Italian protests against the movement of French forces into Tibesti and other parts of the borderlands north of a strict southeast line[143].

5.89 This protest was, in fact, directed at new French posts at two locations north of a strict southeast line: Tekro and Nadi Agdebé in the region of Erdi, just north of the Mourdi Depression near the plateau of Erdi Ma (Map LC-M 50). Both locations lay north of a strict southeast line and, hence, in the view of Italy, lay uncontestably in Cyrenaica. At the end of its note, Italy pointed out that:

> "... dans l'attente que la question rélative aux frontières méridionales de la Cyrenaique puisse être réglée [sic] entre les deux Gouvernements, le Gouvernement Italien, de son côté, s'est abstenu de toute occupation de localités sises dans la zone en contestation[144]."

5.90 With France's occupation of Tekro in 1934, the great eastern trade route from Koufra was finally placed under attempted French control. Occupation of Gouro and Yebbi Bou in Tibesti after 1930 had the same effect as to the western trade routes to Fezzan and Tripolitania[145]. The post at Tekro was nevertheless abandoned by French forces on 28 April 1941[146]. (The post at Ounianga Kebir had already been abandoned on 13 July 1940.)

---

[142] See, LM, para. 5.283 and Map No. 81.

[143] See, CM, Annex 142, for the French text of the Italian note of 9 June 1934. This document is annexed hereto as Exhibit LC-M 20.

[144] Exhibit LC-M 20.

[145] See, Exhibit LC-M 18 hereto, an extract from the "Historique du poste de Tekro".

[146] See, fn. 101, above.

5.91 Even after 1930, however, French forces did not effectively control the borderlands; and their occupation was protested by Italy, which refrained from attempting to occupy part of this region until the matter of Libya's southern boundary was settled diplomatically[147], an event about to take place.

5.92 Furthermore the attacks by the indigenous tribes on the French during this period did not only emanate from Tibesti. The evidence is that they came from the region of the Erdi and the Tekro wells, as well:

> "Le passage obligé des caravanes au puits de Tékro, attira vite en cet endroit isolé de nombreux bandits et pirates qui, leur coup accompli, jouissaient d'une impunité absolue en enfonçant dans les étendues désertiques qui entourent cette région, soit en direction d'Ouri, soit en direction des Erdi ... Ces actes de piraterie étaient encore assez fréquents en 1927, 1928 ainsi que le signale le Chef de Poste d'Ounianga dans son journal[148]."

Evidence produced by Chad in the form of a 1931 political report reveals that the resistance of the indigenous people had only recently started to be brought under some form of control:

> "... une grosse amélioration vient d'être apportée à la sécurité des confins nord-est de la Subdivision du Borkou. Les indigènes du Koussi, qui jusqu'à présent vivaient à peu près en dehors de notre contrôle ... viennent d'être incorporés dans le groupement des Ourias [ce qui] marque un pas décisif vers la pacification du Koussi[149]."

Even at that, large areas of Borkou and Ennedi still lay beyond French authority and control in 1931:

> "Il existe cependant encore dans la circonscription du Borkou-Ennedi trois régions où notre autorité est discutée, voire même contrecarrée. Ce sont: la région de Modra et Tarso Chii, le Mortcha et la pointe nord est de la Subdivision de l'Ennedi, dans l'Erdi au sud d'El Aouinat[150]."

---

[147] See, para. 5.89, above.

[148] Exhibit LC-M 18, hereto.

[149] CM, Production 48.

[150] Ibid.

The various places where armed battles were fought are shown on Map LC-M 48 referred to at paragraph 5.60 above. According to this 1931 report, in this region were assembled:

> "... la plupart des Toubbous rebelles et des indigènes qui veulent vivre au Tibesti en marge de notre autorité[151]."

5.93 In fact, resistance by the Senoussi peoples in this region was reported in 1931 to be on the increase. Several examples are cited in the 1931 report, naming the Toubous as culprits, who were able to escape pursuit by the French forces. Police action in Tibesti had reportedly become less effective due to force reductions. In the region of Mortchka (Oum Chalouba is in this region), there were many acts of violence against convoys to supply French troops in Faya. The French were forced to furnish protection to the convoys, as they had in 1916. Further north, in Erdi, the "bande de Gongoï à cheval sur les territoires français, anglais et, italien" had become uncontrollable, calling for joint action of the three European Powers.

5.94 Thus, in 1935 when Italy and France finally sat down to settle Libya's southern boundary, the situation on the ground in Borkou and Ennedi was not much different than it had been in 1916. Two new posts (Tekro in Ounianga and a post in Erdi Ma) had been established, but only under Italian protest; and the area was the scene of frequent raids by Senoussi tribesmen. Tibesti had been occupied after 1930, but again under Italian protest.

5.95 The A.E.F. went through the motions of conducting a census in Borkou and Ennedi, but the ineffectiveness of this activity is revealed at the end of this same official 1931 report:

> "Le recensement de la population européenne et indigène de la Circonscription du Borkou Ennedi aura lieu le 1er juillet 1931 en exécution des prescriptions de M. le Gouverneur Général. Dès maintenant, on peut prévoir d'assez grosses difficultés dans le recensement des nomades pour lesquels les chefs de Subdivision sont laplupart [sic] du temps obligés de se baser sur les rôles d'impôts qui sont encore forcément incomplets[152]."

---

[151] Ibid.

[152] CM, Production 48.

The French forces in military occupation were in territory where they had no right to be, against the wishes of the indigenous peoples, and the occupation was proving to be extremely difficult and not at all peaceful.

5.96 The general settlement arrived at in 1935 in the Treaty of Rome resulted in a compromise boundary line that bore little relation to the negotiations, proposals and the situation on the ground during the period after Italy, following the Treaty of Ouchy, became the Power with which France had to deal over Libya's boundaries. The line envisaged was roundly criticized by the French experts at the time. For example, General Tilho, who had been so intimately involved in the French invasion of the borderlands, the mapping of Tibesti and surrounding borderlands, and who had served on the French delegation negotiating the 1919 Anglo-French Convention, made his dissenting views known shortly after the Treaty was signed to the French Académie des Sciences, of which he was a member[153]. M. Louis Marin, then senior Minister of State without Portfolio, addressed his criticisms directly to Foreign Minister Laval on 19 February 1935, offering at the same time certain suggestions to guide the French team that would be assigned the task of demarcation[154].

5.97 The French travaux préparatoires of the 1935 Treaty reveal that, at the outset of negotiations, the French Ministry of Colonies anticipated that the least Italy would settle for as to the southern boundary of Libya would be a strict southeast line. In their view:

> "... le moins que puissent réclamer les Italiens en ce qui concerne la fixation de la frontière de Libye serait ... l'acceptation par nous de leur interprétation de la ligne frontière décrite au paragraphe III de la déclaration du 21 Mars 1899. Notre adhésion donnerait en effet à l'Italie un territoire sans doute déshérité du point de vue économique mais représentant une assez grande superficie ce qui permettrait d'afficher un succès pour les négociateurs de l'Italie[155]."

---

[153] Note for the Minister of Foreign Affairs, 29 January 1935, Exhibit LC-M 21, hereto.

[154] A copy of the Dispatch is attached as Exhibit LC-M 22.

[155] Note of 4 September 1934, Exhibit LC-M 23, hereto. Other Quai d'Orsay notes in preparation for negotiations of the 1935 Treaty, and a Quai d'Orsay Report on the results of the 1935 Treaty have also been attached at Exhibit LC-M 23.

The Quai d'Orsay, in preparing for these negotiations considered that Italy's demand "ne paraît pas inacceptable"; but it pointed to the disadvantages of giving in to Italy:

> "La principale objection qui pourrait y être faite est que nous occupons actuellement ces régions semi-désertiques avec de très faibles effectifs et un minimum de frais, séparés que nous sommes des Italiens par une vaste étendue de déserts complets. Une fois les Italiens installés sur la même rive du Sahara que nous, nous subirons la comparaison peu flatteuse de nos misérables moyens avec leur puissante organisation et il nous en coûtera très cher pour faire beaucoup moins bien qu'eux. Toutefois, le tracé actuel de la frontière ne nous défend pas complètement contre cet inconvénient[156]."

This comment points up the French Government's awareness of the ineffectiveness of the French occupation of the borderlands at that time and of its desire to keep it that way.

5.98 The French Government was relieved that Italy soon dropped its initial proposal to hold France to its 1928 offer of the Djado salient south of Toummo[157]; moreover, Mussolini had been impressed by General Badoglio's view that it would be more in Italy's interest to seek territorial advantages elsewhere in Africa rather than in the Libyan hinterland. Thus, Italy proposed a line east of Toummo that would (i) only eliminate the angle caused by the hypothetical line connecting Toummo to the Tropic of Cancer and (ii) compromise the differences over the direction of the Article 3 southeast line by arriving at a median line between the French and Italian interpretations of the 1899 Declaration[158]. In the end, the line agreed was the following, as described in a report dated 24 January 1935 prepared by the Quai d'Orsay:

> "La ligne définie par le Traité du 7 janvier dernier coïncide sensiblement, sauf dans la région de Tummo, avec la ligne franco-anglaise, telle qu'elle se comportait avant d'avoir été modifiée à notre profit en 1919[159]."

---

[156] Note for the Minister, 1 October 1934. Exhibit LC-M 23, hereto.

[157] See, LM, para. 5.260, et seq.

[158] See, LM, para. 5.311, et seq.

[159] Report of the Quai d'Orsay on the results of the 1935 Treaty dated 24 January 1935. Exhibit LC-M, 23, hereto.

This was clearly a reference to the line as shown on the Non-Annexed Map; and it is of great interest to note the Quai d'Orsay's candid admission that the 1919 Convention modified to France's advantage the 1899 line as France had depicted it on that map. This view of the French Government at the time is flatly contrary to Chad's position today, for Chad maintains the lines are identical[160].

5.99 The Quai d'Orsay's description of the 1935 line goes on to explain the rationale behind the line:

> "Elle abandonne à l'Italie les contreforts nord du Tibesti peuplés par des tribus qui sont plutôt en relations avec Koufra et le Fezzan qu'avec le Soudan. Elle laisse en notre possession toutes les tribus qui nomadisent régulièrement vers le Sud, les sommets culminants du massif, les grandes voies de communication qui le desservent, les centres d'habitation principaux et à l'est les Salines qui ravitaillent toute la région du Tchad. Elle donne à l'Italie une bonne palmeraie, celle d'Aozou, et quelques points d'eau secondaires, Guezenti, Ouri et Yebbi - Souma[161]."

Libya does not consider that the French analysis concerning the tribes in Tibesti was correct; but the important point here is that no mention is made at all of French effectivités as one of the factors that might or could affect the course of the boundary line.

5.100 As has been pointed out in Part III above as well as in the Libyan Memorial, in agreeing to this line Italy sacrificed in a major way its claims regarding Libya's southern boundary in order to obtain France's agreement concerning Ethiopia. The French Government conceded at the time that Italy had made a major concession to France in its agreement as to the southern boundary of Libya[162]. Toward the end of the negotiations, Mussolini asked for a minor modification so as to add a few more inhabited points to the Italian side of the line. The French agreed. Then, near the very end of the negotiations, the Italian team attempted to change the line. The Quai d'Orsay summary describes this development in these words:

> "Les négociateurs italiens avaient paru, jusqu'aux derniers jours de l'année dernière, devoir accepter nos propositions sans difficulté. Mais, en dernière heure, le Ministère des Colonies y a fait une très

---

[160] See, CM, p. 376, conclusion 1(x).

[161] Exhibit LC-M 23, hereto.

[162] See, LM, para. 5.339.

> vive opposition. Il se faisait l'écho du Gouverneur Général de Libye, le Maréchal BALBO, qui prétendait d'ailleurs, contrairement à la réalité, que le territoire cédé ne permettrait pas à l'Italie un établissement permanent. Les négociateurs italiens ont donc insisté très vivement pour obtenir l'amélioration du tracé par la cession d'AFAFI, point d'eau situé au sud-est de Tummo, de BARDAI et de TEKRO[163]."

The French negotiators flatly rejected the proposal, and Mussolini did not press the issue, so it was dropped. As the same document observes:

> "... il n'est pas douteux que les milieux coloniaux de la Péninsule conserveront de ce résultat une déception durable."

5.101 In Part VI below, a number of conclusions are set out concerning the 1935 Treaty and related accords. These relate primarily to its significance in revealing that as of 1935 there was no conventional boundary east of Toummo and to the fact that, since the line agreed in 1935 never took effect as an international boundary, France's obligations to Italy under Article 13 of the 1915 Treaty of London were never fully discharged. To these conclusions, another should be added concerning French effectivités.

5.102 The situation on the ground in 1935 was not invoked in any way by the French Government either as a basis for the boundary it originally proposed or as a justification for that finally resulting from the Treaty. In fact, the travaux reveal France's awareness of the fragility of the French presence in the area[164]. If the supposed French effectivités on which Chad's case relies in substantial part were not significant in 1935 during these negotiations, how can they suddenly become significant now? French effectivités prior to 1935 can hardly be allowed to play a role in determining the boundary in the borderlands now when they were not advanced by the French Government as a basis for the 1935 line, France being well aware then that French effectivités would have provided a very fragile argument if advanced in the negotiations. Thus, the addition to be made to the list of significant conclusions emerging from the 1935 Treaty is that, in agreeing the line, France and Italy took no account of colonial effectivités in the region.

---

[163] French Archives Annex, p. 429. Cited also, at LM, para. 5.322.

[164] See, para. 5.93, above.

CHAPTER III. THE POST-1935 PERIOD

SECTION 1. General Observations

5.103 When the post-1935 period of over 55 years is considered in the context of the events taking place, it is evident that colonial effectivités no longer had a meaningful role to play in establishing title to the borderlands. In the years 1935-1938, the French and Italian activities on the ground were taken in anticipation of the 1935 boundary going into effect. Although the CM has tried to make much out of the "Jef-Jef incident", it is shown below that this was a trivial matter - unlike the 1934 Tekro incident - and in fact demonstrates quite the reverse of what the CM contends[165].

5.104 Less than a year after Italy announced its decision in December 1938 not to exchange ratifications of the 1935 Treaty, World War II broke out. Libya was overrun by foreign military forces, who were to remain in occupation of Tripolitania, Cyrenaica and Fezzan until well after Libya's independence in 1951, the critical date in this case[166]. The Libya-Chad borderlands were occupied by French military forces until 1965.

5.105 Libya maintains that between 1935 and the critical date in 1951 nothing that took place on the ground did or could have affected the claims to title in the borderlands as they stood in 1935. French forces were not only in the borderlands but also in Fezzan and Cyrenaica - either in support of the Allied forces in the War, or as occupying forces after the War in accordance with the Italian Peace Treaty and with the authority of the United Nations. French effectivités during this period cannot be regarded as relevant to a French claim to title that had not already been established; and the discussion of French effectivités in the CM during these periods has no bearing on the resolution of the present dispute.

5.106 Accordingly, from the time of the 1947 Italian Peace Treaty to the evacuation of French forces from Fezzan (in 1957), the French (as well as the British and Americans) continued to occupy parts of what was indisputably

---

[165] See, para. 8.28, et seq., below.

[166] The French withdrew from Fezzan at the end of 1957; British and U.S. forces had been withdrawn from Tripolitania and Cyrenaica by early 1972.

Libyan territory, initially on the basis of Article 23 of, and Annex XI to, the Italian Peace Treaty and, subsequently, on the basis of temporary military, economic and aid agreements between the independent Libyan Government and the Powers concerned. The status of French forces in the borderlands remained wholly equivocal and undetermined throughout the whole of this period and indeed until the evacuation of French forces from the borderlands in 1965. The continued French presence in the borderlands could, throughout the whole of this period and indeed until 1965, only have been based on Article 23(2) of the Italian Peace Treaty, since the final disposition of the borderlands could not be determined until the boundary east of Toummo between Libya, on the one hand, and the A.E.F., on the other hand, had been delimited in accordance with G.A. Resolution 392(V) of 15 December 1950. As has been demonstrated, this was not achieved by the 1955 Treaty between France and Libya. Thus, the various French administrative and legislative measures during the period from 1945 to 1965 recited in the CM as evidence of French effectivités in the borderlands only relate to how France was administering the disputed territory of the borderlands pending their final disposal; they can no more be regarded as manifestations of French sovereignty over the borderlands than the corresponding French activities in Fezzan from 1945 to 1957 could be regarded as manifestations of French sovereignty there, irrespective of French aspirations at the time concerning Fezzan.

5.107 What the situation was on the ground, following the 1947 Italian Peace Treaty, must be considered in the light of certain key events:

- G.A. Resolution 392(V) of 15 December 1950, which called on France and Libya to negotiate to delimit that portion of the Libyan boundary with French territory not already delimited; this meant the Libyan boundary east of Toummo;

- Libya's independence on 24 December 1951, the critical date for determining the claims to title in the borderlands of Libya and France;

- The 1955 Treaty, Article 3 of which set the ground rules for the subsequent delimitation of Libya's undelimited southern boundary and which deliberately omitted effectivités as a factor to be considered by the parties;

- The incidents occurring between France and Libya along the Algerian boundary between 1956 and 1960, the Algerian war, lasting from 1954 to 1962, and the 1956 Suez crisis, which made it impossible for Libya to contemplate entering into any kind of negotiations with France;

- Chad's independence in 1960, but with French forces still occupying the borderlands until 1965;

- In 1965, the outbreak of rebellion in the borderlands followed by civil war in Chad, with the periodic return of French forces;

- In 1973, the Libyan presence in part of the borderlands;

- In 1974, 1980 and 1981, the entering into of treaties between Libya and Chad;

- In 1983-1984, the establishment of the "lignes rouges" at 15°N and then 16°N latitude by the French military forces in Chad as a sort of cordon sanitaire.

5.108 An overview of the way in which the CM deals with the matter of French effectivités brings out the apologetic way in which Chad so often suggests that the test of the effectiveness of the French occupation of the borderlands must be relaxed or adjusted to take into account the special nature of the area. The CM puts this point in this way:

> "Il en découle que lorsqu'on a affaire à des régions désertiques au caractère inhospitalier, difficiles d'accès et avec une faible population, il est admissible que l'exercice de la souveraineté
>
> 1° puisse être discontinu dans le temps et
>
> 2° puisse s'étendre à certaines parties de la région, sans qu'il soit nécessaire que l'autorité souveraine effective couvre chaque portion de ladite région ...[167]."

---

[167] CM, pp. 242-243, para. 132; see, also, p. 305, para. 46.

The basic legal premise behind this statement, which finds support in the Award of Judge Huber in the Island of Palmas Case, is not disputed by Libya; the difficulty is in its application here both in the pre- and post-1935 periods.

5.109 Even if the geographical character of the borderlands and the nature of their peoples are taken into consideration and compensated for, French effectivités fell far short of meeting the required legal standards as expressed by Judge Huber. For it is evident from the discussion in the previous Sections that France was not interested in peaceful occupation at all; its purpose was to control the "northern front" so as to protect "le Tchad utile". The special nature of the geographical setting and circumstances hardly explains, for example, why two posts were established by France in Tibesti in 1914, abandoned in 1916, and then reestablished, together with a number of new Tibesti posts, in 1929-1930. The harsh conditions of the region had not changed; nor, indeed, had the hostile reaction of the inhabitants. What had changed were French perceptions and priorities.

5.110 The CM attempts to offset these shortcomings of the French occupation with an imposing list of legislative and administrative enactments and decrees of the French Government between 1920 and 1940. But surely Chad does not contend that such measures, taken in the more comfortable settings of Brazzaville or of Paris, are a substitute for actual physical occupation and administration of the area. An examination of these measures reveals that they were general in nature and had no specific application to the so-called "B.E.T.". The CM has suggested that:

> "... c'est la promulgation des lois, décrets et règlements régissant l'organisation et la vie du B.E.T. qui doit être considérée comme la première manifestation de souveraineté française sur la région[168]."

But the legislation cited in the CM was only of general application and does not itself constitute evidence of effectivités in the borderlands[169]. In any event, such measures of the French Government could hardly have been opposable to Italy, which had all along protested France's claim to sovereignty. Similarly, here as elsewhere, the CM alleges Italian affirmation of French effectivités, as if such an act - even had it occurred - could have remedied the lack of effectivités. There was no such Italian recognition or acquiescence; but, even if there had been, it would not have cured the absence of French effectivités.

---

[168] CM, p. 255, para. 184.

[169] As to civil administration during the period 1920-1940, the CM (p. 262, para. 207) states that Tibesti was divided into three cantons. (The canton of Aouzou was allegedly created in March 1938 but eliminated a few months later.) The three cantons mentioned in the CM (Zouar, Wour and Bardai-Zoumeri) appear to represent only a small part of the territory of Tibesti; and none covered the area falling within the so-called "Aouzou Strip".

SECTION 2. Certain Events of Some Relevance

5.111 Several events that bear on the situation on the ground after 1935 are, nevertheless, singled out for discussion below for they might have a certain relevance in evaluating the claims to title of the Parties.

(a) French-Italian Armistice Commission

5.112 Less than a year after Italy, in December 1938, made known its intention not to exchange ratifications of the 1935 Treaty, World War II began, although Italy was a full belligerent for a relatively short time (June 1940 to September 1943). After the fall of France in 1940, Italy chaired the Armistice Commission to deal with colonial questions, and in 1941 an important event took place during the discussions about a demilitarized zone through the borderlands. As discussed in the LM, the French took the position that the zone should be calculated taking as the starting point the 1899-1919 line, which they viewed as a conventional boundary binding on Italy[170]. The Italian negotiators rejected this view, considering that portions of the borderlands occupied by the French were Italian and maintaining that, in the absence of a conventional boundary, the 1935 line was the only appropriate starting point for calculating such a zone. The factor of colonial effectivités is not mentioned at all in the available records of these negotiations as having played any part in the discussions. This was a manifestation in 1941 of the view of the Italian Government that no agreed boundary existed as a result either of existing conventions or of colonial effectivités. It should be added that it was partly as a result of concern that Italian effectivités might be advanced by Libya in the 1955 negotiations that the Governor General of the A.E.F., in his famous letter of 2 May 1955 to the Ministre de la France d'Outre-Mer, urged that the French position be based solely on international agreements in force at the time of Libya's independence:

---

[170] See, LM, para. 5.360, et seq.

"... en prenant pour seules bases les traités en vigueur à la date de la création de l'Etat Libyen[171]."

(b) The French Post at Aouzou

5.113 The extraordinary emphasis given in the CM to the "Aouzou Strip" and to the French post at Aouzou (Map LC-M 45 referred to at paragraph 5.43 above) has already been mentioned. It will be recalled that the French post at Aouzou was more an installation on paper than in reality[172]. The evidence, including that produced by Chad, shows the following concerning the French occupation of that post:

- During the first French "occupation" of Tibesti (1914-1916), French posts at Zaour and Bardaï only were established; no post was set up at Aouzou;

- A French post at Aouzou was first established in April 1930 by a detachment stationed at Erbi[173];

- 1931-1933: the Aouzou post was under construction;

- January 1935: the boundary under the 1935 Treaty placed Aouzou on the Italian side of the line[174];

- Between March 1935 and February 1937 the post was apparently not manned[175];

- June 1935: a pre-announced Italian mission visited to discuss the details of turning over the post to Italy pursuant to the 1935 Treaty;

---

[171] See, para. 3.43, above, and LM, French Archives Annex, pp. 169-171.

[172] See, para. 3.34, et seq., above.

[173] See, CM, p. 268, para. 231, and Production 122.

[174] A strict southeast line under Article 3 of the 1899 Declaration would have left Aouzou on the French side of the line.

[175] CM, Production 122.

- 26 July 1936: an Italian overflight of the post;

- February 1937: an unannounced Italian mission visited; April 1937: another Italian overflight;

- 1 January 1938: the post at Aouzou was vacated by the French; this occurred before the Italian decision not to exchange ratifications of the 1935 Treaty was announced (in December 1938); the post remained vacant for the next 13 years, until 1 June 1951;

- 1 April 1954: the post was vacated again "en raison d'une crise d'effectifs"[176];

- December 1954:

  > "... réoccupé definitivement ... après que les autorités du Tchad eussent reçu l'information que les Libyens avaient l'intention de s'y rendre[177]";

- Early 1973: Libyan presence in the borderlands.

- On 3 November 1991, in nearby Ammou, members of the tribes of Aouzou participated in a meeting in the courtyard of the mosque attended by 4,000 members of the tribes of Tibesti, at which resolutions were unanimously adopted to present a petition to the International Court of Justice proclaiming the affiliation of the peoples of the area with Libya[178].

5.114 The 1962 "Historique du poste d'Aozou" contains several additional notations of interest[179]. In winter, the Toubou inhabitants of Aouzou went north to Fezzan to exchange goats for dates and other items. Immigration toward Libya was "favorablement accueillie"; and Libya was having considerable success in recruiting the local Toubou for service in the Libyan army. The peoples' indifference to government is reflected in this entry:

---

[176] CM, Annex 262. ("As a result of a crisis in staffing the post.")

[177] CM, Annex 262.

[178] This document is attached hereto as Exhibit LC-M 3.

[179] CM, Production 122.

> "Le Toubbou ne semble [que] peu se soucier du gouvernement actuel de la République du TC[H]AD, dont il ignore souvent le Président."

5.115 What the evidence comes down to, concerning the post most emphasized and discussed in the CM, is that in the 42 years between the French invasion of the borderlands in 1913 and 1955, the time of the "Aouzou incident", the French post was actively manned for less than 10 years. The evidence brings out two other things: during most of the years 1935-1937, while waiting for the Treaty of Rome to take effect, the post apparently was not manned by the French; and it was abandoned on 1 January 1938, before the Italian Government announced its decision not to exchange ratifications of the 1935 Treaty, for another 13 years (until 1 June 1951). The reason for the "definitive reoccupation" in December 1954 of the Aouzou post, as stated in the official French records furnished by Chad, was that the French authorities had picked up rumours of the intention of Libya to move into Aouzou. This is strongly reminiscent of the reason the French occupied Tibesti in 1929-1930: to head off the Italians. This lack of French effectivités at Aouzou cannot be excused on the basis of the hostile geographical setting and population.

5.116 The "éphémère" presence of the French in Aouzou matches the story of the French presence in the considerably more strategically located posts of Gouro, Ounianga Kebir and Tekro. It will be recalled that the first two of these oases were proposed to be abandoned by France and handed over to the Senoussi (in 1914 and, again, in 1916), a proposal rejected in Paris for political reasons and in the light of the prospective delimitation negotiations with Italy[180]. In 1919, the French Government at the Peace Conference proposed that Bardaï be "ceded" to Italy. The post at the key oasis of Tekro, only established (under Italian protest) in 1933, was abandoned in 1941. The post at Ounianga Kebir had already been abandoned by the French in 1940.

5.117 Hence, the claim of French effectivités advanced in the CM, insofar as Aouzou is concerned, relies primarily on French decrees and legislative measures and on such episodes as the "Aouzou incident", which are exaggerated in order to try to show Italian recognition[181]. It is no wonder that the civilian mission was sent by the Cyrenaican authorities to Aouzou in 1955 to install Libyan governmental officials (and to take a census); based on the record of French effectivités, there was no reason to think there was any French military presence there at all[182].

---

[180] See, paras. 5.44-5.46, above.

(c) Libya's Assumption of Administration over Parts of the Borderlands after 1972

5.118 Libya's presence in a part of the borderlands, at the end of 1972 and start of 1973[183], occurred in the context of the reconciliation between Libya and Chad that took place in April 1972 and the reestablishment of diplomatic relations[184]. President Tombalbaye made an official trip to Libya; and on 23 December 1972 a treaty was signed by Libya and Chad: the 1972 Libya-Chad Agreement of Friendship and Cooperation[185].

5.119 It was at that time that President Tombalbaye wrote Colonel Kadhafi a letter, dated 28 November 1972, the second and third paragraphs of which read as follows:

---

[181] It is paradoxical that the CM, while asserting that alleged French effectivités in Tibesti were the most significant (p. 278, para. 266), reveals that Tibesti was abandoned by French military forces between 1916 and 1929. Furthermore, even had there been French effectivités in Tibesti, this is no proof of French effectivités in Borkou or Ennedi. A 1954 document produced by Chad (Production 95) reveals that, up to then, there had been no "infirmerie nomade" in Ennedi and that the population had to go to Sudan for health care - hardly an indication of French effectivités in Ennedi.

[182] The CM also reveals the absence of any political party activity in Tibesti (p. 297, para. 11). As a result, elections held in January 1956 witnessed massive abstentions in that region on the order of 90%.

[183] The CM has attempted to move this date backwards to 1971 in order to precede Chad's statement before the General Assembly on 6 October 1971 and thereby to suggest that Chad protested Libya's presence in 1971. See, LM, para. 5.549, et seq., regarding Chad's statement. This invalid attempt to move the date backwards only emphasizes Chad's failure to have protested against Libya's presence in the borderlands for over four years, while in the meantime entering into treaties with Libya that failed to register any such objection.

[184] See, generally, LM, paras. 5.549-5.557.

[185] LM, International Accords and Agreements Annex, No. 34.

> "Au moment où j'exprime le désir de voir se développer notre coopération, permettez-moi de vous inviter à bien vouloir faire cesser le soutien que vous apportez aux hors-la-loi (le soi-disant FROLINAT) qui portent les armes contre le pouvoir légal du Pays et essayent de diffuser des rumeurs selon lesquelles notre Gouvernement a des ambitions sur Aouzou, dans le but de nuire à notre rapprochement et de porter atteinte à notre coopération.
>
> ...
>
> En ma qualité de Président légal du Tchad, je tiens à vous affirmer que la bande d'Aouzou a été et sera, sans aucun doute, partie intégrante du Territoire Libyen."

The CM refers to this letter and annexes a copy - which appears to be a copy of the same document that Libya furnished the O.A.U. Subcommittee in 1987[186].

5.120 The Libyan Memorial did not mention or annex the Tombalbaye letter for the simple reason that Libya has been unable to locate the original of this document. Libya concluded that it could not rely on the document in any way since Libya was unable to furnish the Court with adequate proof of its existence. As the CM brings out in explaining that Chad has had difficulty obtaining documents in the light of the civil war conditions that prevailed in Chad over a number of years[187], newly emergent African States have commonly experienced the difficulty of records being lost and destroyed. It is hoped, nevertheless, that an authentic copy may yet turn up in the Libyan files or among Chad's official papers.

5.121 Another related event to occur during this period was the 1974 Protocole d'Accord between Libya and Chad signed on 12 August 1974, Articles 1 and 2 of which provided as follows:

> "The two sides emphasise their intention to maintain full cooperation in the light of the historical connections between their fraternal people, and to frustrate all attempts to hinder this mutual cooperation and closeness.
>
> ...

---

[186] CM, p. 35, paras. 82-84, and p. 343, para. 194. The copy of the letter appears as CM, Annex 343.

[187] CM, p. 319, para. 111.

> The frontier between the two countries is a colonial creation in which the two peoples and nations had no hand, and this matter should not obstruct their cooperation and fraternal relations[188]."

It should be borne in mind that this Protocole was signed well over a year after Libya's presence in the borderlands was common knowledge.

5.122 Contrary to what Chad appears to have anticipated - for the CM devotes a section to the proposition that "l'occupation militaire ne confère pas de titre"[189] -, Libya does not maintain that its claim to title in the borderlands is based on its presence in the borderlands. In fact, it wholly subscribes to the proposition argued by Chad in that section of its Memorial - that military occupation confers no title - although apparently Chad overlooks the application of this principle to the French movement into the borderlands after 1913.

5.123 It is not Libya's position that the Tombalbaye letter involved a "cession", or attempted "cession", of Chadian territory to Libya, as some commentators have suggested[190]. The words are clearly interpretative in nature. Nevertheless, the legal significance of such a formal interpretation as this by a Head of State is well established under international law[191]. What the words appear to mean is that Chad regarded Libya to have title to the area and that this legal title was to be confirmed ("sera") in the future delimitation negotiations between Libya and Chad yet to take place concerning this frontier. At the very least the Tombalbaye letter is further evidence of the continuing absence of a conventional international boundary between Libya and Chad. There appears to be no question that under Chad's Constitution its lawful President had full authority to write such a letter including these interpretative statements.

---

[188] LM, International Accords and Agreements Annex, No. 35.

[189] CM, pp. 71-73, paras. 89-92.

[190] See, Lanne, B.: Tchad: La querelle des frontières, Paris, Karthala, 1982, pp. 228-229.

[191] In the Nuclear Tests cases, the Court stated:

> "It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with that declaration." I.C.J. Reports 1974, p. 267.

The Permanent Court had already, in the Eastern Greenland Case, found that the oral declaration (later reduced to writing and initialled) made by the Norwegian Foreign Minister (M. Ihlen), advising the Danish Foreign Minister that the Danish plans respecting Danish sovereignty over the whole of Greenland "... would not encounter any difficulties on the part of Norway", was binding on Norway: Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J. Reports, Series A/B, No. 53, p. 73. The Tombalbaye letter clearly fulfils the criteria indicated in these two cases for the recognition of unilateral undertakings as legally binding, given the position of Tombalbaye at the time as head of State. See, in this regard, Article 7(2) of the Vienna Convention on the Law of Treaties.

5.124 At the meeting between the two Heads of State in Tripoli at the end of December 1972 (after this letter had been delivered), at a banquet held in President Tombalbaye's honour, the Chadian President made these remarks:

> "... I and the delegation accompanying me on this visit are not in Libya for the first time. History tells us that before imperialism, which has ruled both our countries, there were close fraternal bonds. The current borders were created by imperialism ... We, the Libyans and Chad, consider any difference between us as the result of the geographic situation created by imperialism. I confirm to you, Mr. President, that no Chad[ian] considers himself in foreign territory when he is in the Libyan Arab Republic ... [192]."

The tenor of these remarks bears out the interpretation of the Tombalbaye letter set out above.

5.125 Aside from this letter, the Libyan presence in the borderlands was a well-known fact to Chad when it entered into the 1972 Convention and the 1974 Protocole d'Accord. As reported by Crozetière, the first official Chadian reaction to the Libyan occupation occurred on 26 September 1975:

> "Le général Malloum reconnaît publiquement pour la première fois la présence de troupes libyennes sur le territoire tchadien[193]."

Thus, almost three years after Libyan occupation of the borderlands (incorrectly described by the commentator in the quoted passage as "territoire tchadien"), Chad's President "reconnaît" their presence; this was not even a protest. The absence at the time of any Chadian protest was also noted by the then French Ambassador to Chad, in a book he subsequently published:

---

[192] The full text of these remarks appears as Exhibit LC-M 24.

[193] See, LM, para. 5.561 and citation in fn. 589.

> "Aouzou est maintenant dotée d'une garnison libyenne, sans avoir pour autant entraîné réaction du gouvernement de Tombalbaye[194]."

5.126 It was not until 10-12 August 1977 that Chad placed this matter before the OAU. On 4 February 1978, again for the first time, Chad referred the matter to the Security Council[195]. On 17 February 1978, the Security Council debate on the question opened; it lasted for one day, for on 22 February, Chad withdrew its complaint[196].

5.127 Following this, Libya and Chad entered into two further agreements in which no mention of Libya's presence in the borderlands was made: the 1980 Treaty of Amity and Alliance, and the 1981 Accord, sometimes referred to as the "Accord de fusion"[197].

5.128 This, then, was the setting in which Libya's presence in parts of the borderlands (and the reaction, or lack of reaction, to it) took place. Two agreements between Libya and Chad were entered into while these events were taking place, in 1972 and 1974. The matter was not brought to the OAU's attention until August 1977, almost five years later, or to the U.N. until February 1978. In 1980, the two Governments entered into a treaty of alliance; and in 1981, they agreed on a fusion of their States. Measured against the test under which Chad examines the conduct of Italy and of Libya in its attempt to establish recognition and acquiescence, the conduct of Chad's Government here is certainly not easy to explain away; and it supports what President Tombalbaye said in his letter, for otherwise Chad would at once have protested Libya's presence in the borderlands, and Chad would certainly not have entered into a series of treaties with Libya in the circumstances.

5.129 The CM has attempted to explain away Chad's conduct, nevertheless. Its account of the events surrounding Libya's occupation of part of the borderlands attempts to justify away the conspicuous delay of Chad in making any protest, not to speak of the Tombalbaye letter and the agreements of 1972 and 1974, entered into between Libya and Chad while this was happening. The line of argument taken in the CM is this:

---

[194] See, LM, para. 5.560 and citation in fns. 587-588.

[195] See, LM, paras. 5.561-5.563.

[196] See, LM, para. 5.563.

[197] See, LM, paras. 5.565-5.567; and International Accords and Agreements Annex, Nos. 37 and 38.

> "Après avoir tenté en vain d'obtenir le retrait des troupes libyennes par des négociations bilatérales, le Tchad porta l'affaire devant les instances internationales ...[198]."

5.130 The CM contends that in August 1974 President Tombalbaye sent a mission to Tripoli "en vue de protester contre la présence libyenne à Aozou", adding that the Libyans with whom they met played down Libya's presence as a simple police operation and denied that Libya "nourrissait un quelconque dessein d'annexion de la Bande"[199]. The CM neither refers to nor annexes any evidence to support this allegation; and Libya rejects this account for lack of evidence. Libya has no such record of the meeting.

5.131 The CM refers to two other such meetings. According to Chad, the second meeting was also held in Tripoli, between 29 July and 5 August 1976. Chad has produced a document relating to this meeting, Annex 283, which must be examined with care. It purports to be a report of this mission, and bears a signature identified as that of I.R. Alamdou, Chef de Service des Affaires Internationales, shown in the report as a member of the Chadian delegation. The date the report was signed is not indicated. Furthermore, the document does not appear to be a photocopy of an original document but a retyped version with certain inked-in alterations. In its conclusions, this document states the following:

> "Les deux délégations se sont séparées dos à dos sans qu'un procès-verbal ne soit établi ni un communiqué final publié[200]."

Thus, the document represents an entirely unilateral account of the meeting.

---

[198] CM, p. 33, para. 76.

[199] CM, p. 35, para. 84.

[200] CM, Annex 283.

5.132 The alleged report is highly charged politically in its tone and contents. It indicates that the meeting was not friendly. According to the document, "le problème frontalier TCHAD-LIBYE" was discussed, the exchange being summed up as follows:

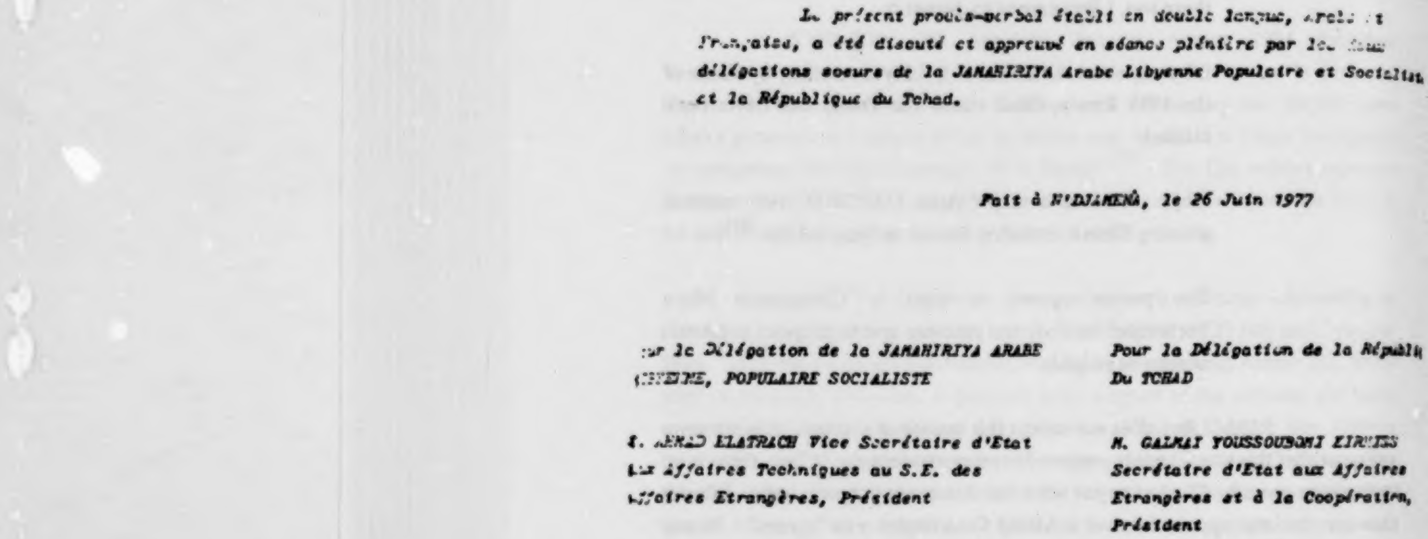
- Libya denied there was a problem, but since Chad insisted there was, Libya agreed to discuss it;
- Libya asserted Aouzou was in Libyan territory by virtue of the 1935 Treaty; Chad stated the Treaty had never been ratified;
- Libya produced a map ("Atlas OXFORD" 1956 edition) showing Tibesti, including Bardaï, as lying in Libya[201];
- The parties agreed to form a "Commission Mixte Technique" to study the problem and to propose a solution as soon as possible.

5.133 Libya does not accept this unilateral account. It is not even apparent that this was a report prepared contemporaneously; in fact, there is no explanation given by Chad as to just what this document purports to be. Libya is unaware that the appointment of a Mixed Commission was "agreed". In any event no such body was created or went to work on the problem. Libya has no such record itself of the meeting.

---

[201] It is noted that Bardaï lies well south of the 1935 line.

5.134 The third meeting reported in the CM to have taken place was allegedly held in N'Djamena in June 1977. The document introduced by Chad concerning this meeting, Annex 284, is entitled "Procès-Verbal"; its signature page appears this way:



Le présent procès-verbal établi en double langue, Arabe et Française, a été discuté et approuvé en séance plénière par les deux délégations soeurs de la JAMAHIRIYA Arabe Libyenne Populaire et Sociali et la République du Tchad.

Fait à N'DJAMENA, le 26 Juin 1977

ur la Délégation de la JAMAHIRIYA ARABE IBYENNE, POPULAIRE SOCIALISTE	*Pour la Délégation de la Républ Du TCHAD*
. AHMED ELATRACH Vice Secrétaire d'Etat ux Affaires Techniques au S.E. des ffaires Etrangères, Président	*M. GALMAI YOUSSOUBOMI ZIRNISS Secrétaire d'Etat aux Affaires Etrangères et à la Coopération, Président*

As this reproduction of the signature page shows, the "Procès-Verbal" is not signed. As to its form, once more it is unclear just what Chad claims this document to be. Is it an unsigned exact copy of a signed (or of an unsigned) original? Is it a retyped version of a document that was in fact never signed by the parties? In either case, why is the original not produced? Libya insists that this is not satisfactory evidence of what Chad claims transpired at the meeting. On its side, Libya has no such record.

5.135 As to the contents of the document, it appears to be a summary of a meeting of what is identified in the opening paragraph as "la Commission Technique Mixte", which brings to mind the 1976 meeting mentioned earlier. However, this paragraph says this about the "Commission"'s agenda:

> "La Commission Technique Mixte a discuté de la Recherche des voies et moyens pour l'amélioration de la Coopération entre le Tchad et la Libye, seul point inscrit à l'ordre du Jour.
>
> En effet dans leur discours d'ouverture, les deux Chef [sic] de Délégation ont souhaité que les débats soient colorés de franchise, sincérité et de bonne foi, afin qu'une solution honnête soit trouvée en vue de favoriser la coopération économique, sociale, culturelle et technique entre les deux pays frères[202]."

This brings out clearly that the sole subject on the agenda of the "Commission" had nothing to do with the boundary between Libya and Chad. Presumably, therefore, the "Commission" was not the same as that mentioned in the 1976 "report", whose alleged mission was to deal solely with the boundary matter.

5.136 What this document states is that the Chadian delegation shifted the discussion from the subject on the agenda to the "dispute" between the two countries and to the alleged "illegal occupation" of Aouzou by Libya, saying that the cooperation agreements could not be put into effect, in Chad's view, until this matter had been cleared up. Libya is reported to have denied the existence of such a dispute and to have said that, in any event, it should not hold up the application of the cooperation agreements between them. The document then goes on to spell out the Libyan delegation's arguments based on the 1935 and 1955 Treaties. The Libyan delegation, from this account, obviously unprepared to discuss any subject other than the one on the agenda, proposed a second meeting in Tripoli. Chad advanced, as a condition of its acceptance of such a meeting, Libya's agreement with Chad's view as to the boundary and the elimination of any trace of Libyan administrative or military authority from Aouzou. It will be recalled that two months after this meeting Chad, for the first time, presented the matter of Libya's presence in the borderlands to the O.A.U..

5.137 There are several observations to make about this attempt in the CM to explain away Chad's conduct in the light of Libya's occupation of the borderlands. First, the evidence produced by Chad is no better than the evidence of the Tombalbaye letter; and Libya respectfully calls on the Court to insist that proper evidence be produced in order to support factual allegations made. Second, it is quite apparent that after the outbreak of rebellion in Chad in 1965, and then civil war, Libya could not have seriously entertained the hope of negotiating with any particular Chadian government then in power over matters affecting the sovereignty of the two States. Third, the meetings referred to by Chad were held to discuss entirely different subjects relating to economic assistance and cooperation; and the Libyan delegations did not come to these meetings prepared to discuss boundary questions.

---

[202] CM, Annex 284.

5.138 Just as was to occur later, when Chad brought up the territorial dispute before the U.N., the question had become a kind of political football. As the LM expresses it:

> "It was clear that raising the territorial dispute between Libya and Chad before these international forums, under the guise of Libya's alleged occupation of the 'Aouzou Strip', claimed by Chad to be its territory, was part and parcel of the civil war between the different factions in Chad then raging[203]."

(d) The French "Lignes Rouges", 1983-1984, and Events Both Before and After their Establishment

5.139 The drawing of these lines in connection with the French military intervention called "Opération Manta", which followed the bombing of Faya-Largeau in August 1983, is dealt with in the LM[204]. What is revealing about this episode and other contemporaneous events is the ambivalence shown by the French Government at the time.

5.140 This sort of ambivalence appears also in the Accord of Lagos of 29 August 1979[205]. For although Libya was occupying parts of the borderlands, there is not a word in the Accord about that situation. For example, Article 7 of the Accord mentions the presence of French forces in Chad as an obstacle to reconciliation; but there is no mention of Libyan forces in the borderlands. The text of Article 7 reads as follows:

> "Les parties tchadiennes ont reconnu unanimement que la présence continue de troupes françaises au Tchad est un obstacle à une reconciliation pacifique et à une solution au problème tchadien. Les tchadiens conviennent donc que le Gouvernement d'Union Nationale de Transition devra dès sa formation veiller à obtenir le retrait des troupes françaises."

---

[203] LM, para. 5.561.

[204] See, LM, para. 5.568.

[205] The Accord is annexed hereto as Exhibit LC-M 25.

5.141 It is also of interest to note the text of Article 7 of the 1980 Treaty of Friendship and Alliance between Libya and Chad, which while rejecting the implantation of foreign bases on Chad's territory, makes no mention of Libya's presence in Chadian territory and even reserves the right to call on Libya for help in maintaining Chad's independence:

> "ARTICLE 7
>
> The Republic of Chad undertakes not to permit the presence of any foreign base or imperialist colonialist forces on its territory, and reserves the right to call upon the Socialist People's Libyan Arab Jamahiriya if its independence, territorial integrity or internal security is threatened in accordance with the provisions of Article 1[206]."

5.142 It is also important to note that when Libyan forces, called into Chad by the GUNT (the legitimate Government of Chad established under the Lagos Accord), were asked to withdraw following the Nairobi Conference of 27 June 1981, Libyan forces were promptly withdrawn from Chad - but they remained in the borderlands.

5.143 When the French Government mounted Opération Manta in 1983, it established a "ligne rouge" at 15°N latitude. This was advanced to 16°N on 28 January 1984. The purpose of the line has been expressed in these words:

> "Dès lors que les franchissements de la zone 'rouge' seront constatés, la force Manta pourra se considérer comme directement agressée ... L'ouverture de feu sans préavis est donc autorisée dans la nouvelle 'zone rouge'[207]."

Considering that Faya-Largeau, where the attack occurred that precipitated this French intervention, lies approximately on the line of 18°N latitude, it is striking that the French Government drew the line as far south as 15°N (and then 16°N). If the French Government had not wished to indicate that considerable leeway existed here, it should have drawn the "ligne rouge" at 18°N or at 19°30'N or at the 1899-1919 line.

---

[206] LM, International Accords and Agreements Annex, No. 37.

[207] Colonel Spartacus: Opération Manta, Tchad 1983-1984, Paris, Plon, 1985, p. 142. (A copy of this page is attached as Exhibit LC-M 26.) See, LM, Map No. 109, which portrays the "lignes rouges".

5.144 On 30 April 1984, Libya proposed the withdrawal of Libyan forces from Chad so as to remove any pretext for French troops to remain[208]. An accord between Libya and France was announced on 17 September 1984, one element of which was the following agreement:

> "La Jamahiriya et la France ont décidé de procéder dans les meilleurs délais à l'évacuation totale et concomitante du Tchad des forces armées françaises et des éléments d'appui libyens au GUNT, ainsi que de la totalité de leurs armements et équipements respectifs[209]."

It is clear that the region of northern Tibesti, where Libya had been present since the end of 1972, was not included within the agreement of withdrawal reached between Libya and France[210].

5.145 Evidence of the French Government's ambivalence concerning sovereignty over the Libya-Chad borderlands is to be found in a statement made by the French Minister of Defence, Charles Hernu, during a publicly televised interview on 27 March 1985. He is reported to have said the following:

> "La bande d'Aouzou est hors du Tchad. Cela, tout le monde en est d'accord. Même le président Habré le reconnait. C'est une affaire qui remonte à 1934."

He added this:

> "Il n'y a pas de partition. Au Tchad, il y a le Nord, il y a le Sud. Je mets hors du Tchad la bande d'Aouzou. Nous sommes, nous, pour l'intégralité, l'intégrité du Tchad ...[211]."

5.146 Libya does not contend that the factor of Libyan effectivités in portions of the borderlands in any way has resolved the present dispute. Libya does not base its claim to title on these events. However, it is clear that Libya had as much right as Chad - and certainly as much as the French - to administer the borderlands in the interests of security and of the peoples of the region, whom Libya regards as Libyans and who have, as mentioned above, recently expressed their wish to be recognized as belonging to the State of Libya[212]. By its conduct during 1983-1984 and in the statement of its Minister of Defence in 1985, France recognized that Libya had legal titles that were worthy of respect.

---

[208] Colonel Spartacus, op cit., p. 176.

[209] See, Rousseau, C.: "Chronique des faits internationaux", Revue Générale de Droit International, Tome 89, 1985, p. 477. (A copy of this page is attached as Exhibit LC-M 27.)

[210] Ibid., p. 479. Exhibit LC-M 27.

[211] Jeune Afrique, No. 1266, 10 April 1985, p. 22. See, also, Buijtenhuijs, R.: Le Frolinat et les guerres civiles du Tchad (1977-1984), Paris, Karthala, 1987, p. 287, attached at Exhibit LC-M 28.

CHAPTER IV. CONCLUSIONS

5.147 Chad's third theory, which is based on French colonial effectivités, is not supportable in law:

- The principle of uti possidetis juris, adopted by the parties to the 1955 Treaty in its Article 3, excluded colonial effectivités as a boundary criterion thereunder;
- Even if French effectivités had not been ruled out under Article 3 of the 1955 Treaty, the French use of military force in their invasion of the borderlands was in violation of international law, for it was an illegal usurpation of the titles to these lands held by the indigenous Senoussi peoples[213];
- In any event, the French military presence in the borderlands could not be characterized as having been a "continuous and peaceful display of State authority" and, hence, did not constitute effective occupation (effectivités) under prevailing legal standards.

5.148 Equally, French colonial effectivités are not established by the facts as to the nature and extent of the French military presence in the borderlands:

---

[212] See, para. 5.113, last item, above.

[213] It also ignored the pre-existing claims of the Ottoman Empire inherited by Italy under the 1912 Treaty of Ouchy.

- Prior to 1919, French military forces in the borderlands were concentrated in posts at Faya and Fada (18°N latitude) with only scattered outposts further north, and had abandoned Tibesti after only a two-year presence;

- The French operations in the borderlands were purely military in nature, having as their purpose the defence of Chad to the south of the borderlands;

- Starting in 1913 and lasting into the 1920s (and even into the early 1930s), there was armed resistance against the French forces in the borderlands by the indigenous Senoussi peoples; this followed on the heels of the bitter battle of these peoples to keep the French out of the borderlands;

- When, in 1929-1930, the French military forces took steps to increase their strength in the borderlands, moving into Tibesti, it was not to occupy the region but as a show of strength in the face of Italian forces moving south toward the borderlands and in the light of the ongoing negotiations between Italy and France to delimit Libya's southern boundary;

- In the negotiations in 1934-1935 that led to the 1935 Treaty, the French placed no reliance on alleged French effectivités, and the resulting line did not reflect that factor.

5.149 After 1935, the situation on the ground became essentially irrelevant as a factor in the present territorial dispute. Until the end of 1938, the 1935 agreed boundary line was presumed to be about to take effect. Less than a year after Italy made known its intent not to exchange ratifications, World War II broke out. What happened on the ground, and the various legislative measures adopted by France - whether for the borderlands or for Fezzan, into which French forces had also moved - up to Libya's independence on 24 December 1951 have no bearing on the present dispute since they were either war-time measures or acts taken in carrying out the role assigned to France by the United Nations in respect to Italy's former African colonies.

5.150 The actions of France and Chad after Libya's independence only serve to confirm the absence of a conventional boundary between Libya and Chad. This conclusion emerges from:

- **The 1972 Tombalbaye letter;**
- **The extremely delayed reaction of Chad to Libya's assumption of administration in a part of the borderlands, starting in late 1972-early 1973;**
- **The agreements entered into between Libya and Chad in 1972, 1974, 1980 and 1981, in spite of Libya's presence in the borderlands, without any mention of that fact;**
- **France's lignes rouges established between 1983-1984, and the statement made by French Defence Minister Hernu in 1985, just referred to above.**

The issue over the "Aouzou Strip" had become a political football in the civil war raging in Chad; and it was evident that the resolution of the territorial dispute between Libya and Chad required that it be taken out of the political arena and referred to the Court for resolution in accordance with the general principles and rules of international law.

PART VI

THE 1935 TREATY OF ROME AND RELATED ACCORDS

6.01 The Memorials submitted by both Libya and Chad treat extensively and in detail the 1935 Treaty of Rome and related Accords and their influence on the resolution of the present territorial dispute. There is, of course, an important divergence in many of the views held by Libya and Chad concerning the Treaty and Accords, especially as to the conclusions to which they lead. Nonetheless, there is a substantial measure of agreement, as well, on a fair number of questions. The points of agreement will be dealt with first, in Chapter I. It will then be easier to isolate the true points of difference between the Parties for the Court to resolve, which are then dealt with in Chapter II. In Chapter III, Libya's conclusions as to the significance of the 1935 Treaty and Accords, in the light of this discussion, are set out[1].

CHAPTER I. POINTS ON WHICH LIBYA AND CHAD AGREE

6.02 The Memorials of the Parties are in agreement on four essential points concerning the 1935 Treaty and Accords:

(i) In these accords, Italy made a major sacrifice, in favour of France, of its rights and interests concerning the lands lying in southern Libya, in return for France's "désintéressement" in regard to Ethiopia;

(ii) Unlike the other Accords signed the same day, the Treaty itself never entered formally into force, because Italy, in spite of France's pressures for it to do so, refused to take the required step of exchanging ratifications;

(iii) As a result, the boundary fixed by the 1935 Treaty never, in the end, was allowed to come into effect and, accordingly, the pre-existing legal position was not modified;

---

[1] See, also, the discussion of the 1935 Treaty in Part VIII, below, starting at para. 8.19.

(iv) Hence, France's obligation under Article 13 of the 1915 Treaty of London to provide "equitable compensation" to Italy in the resolution of boundary questions between them was never fully discharged.

Each of these four points will be taken up in turn below.

SECTION 1. Italy's Sacrifice of its Territorial Rights and Interests

6.03 The two Memorials take up this point in much the same way, citing many of the same sources and reaching essentially the same conclusions. Thus, the CM states that Article 2 of the 1935 Treaty -

> "... représentait un gain négligeable par rapport aux aspirations territoriales que les autorités italiennes avaient avancées avant 1935[2]."

The LM makes the same point by saying that the solution to the boundary question agreed by Italy "involved a notable sacrifice ... of its Libyan interests ..."[3]. The point is brought out even more emphatically in the CM in quoting a passage from an internal note of the Quai d'Orsay dated 24 January 1935 in which it was recognized that:

> "La frontière qui séparera désormais la Libye de l'A.O.F. et de l'A.E.F. à l'Est de Tummo reste très en deçà des demandes présentées par l'Italie et même de certaines offres faites par la France depuis 1919[4]."

6.04 The Parties are also in agreement that what the Italian note verbale of 17 December 1938 called "important sacrifices" of a territorial character (described in the CM as "importantes concessions"[5]) were accepted by Italy for reasons quite apart from the matter of Libya's boundaries. Mussolini was ready to sacrifice Libya's southern territories in order to "obtenir l'aval futur, par la France, de la conquête italienne de l'Abyssinie"[6].

---

[2] CM, p. 348, para. 9.

[3] LM, para 5.353.

[4] CM, p. 348, para. 10. Emphasis added.

[5] CM, p. 347, para. 7.

SECTION 2. Unlike the Other Accords of the Same Day, the 1935 Treaty Never Formally Entered Into Force

6.05 There is also full agreement between the Parties that the condition of Article 7 of the 1935 Treaty, under which the ratifications of the Treaty were to be exchanged as a formal requirement for it to enter into force, was never carried out[7]. The CM makes a point of fixing the blame for this failure on Italy, which refused to give in to the repeated pressures from the French side and take the final steps to put into effect the Treaty[8]. This brings out clearly that France considered the 1935 Treaty to be very advantageous for it, while Italy - which had sacrificed its territorial interests to obtain the political objective of France's connivance in its aggression against Ethiopia - no longer had any reason to follow through with the final steps of the Treaty in the light of France's subsequent conduct that Italy considered as basically hostile to her and not in keeping with the prior assurances given by France[9].

6.06 Thus, the CM recognizes that the reasons that Italy had for allowing the 1935 Treaty to lapse were entirely political in nature and concerned the general relations between the two countries, and that the resolution of the question of Libya's boundaries had only a marginal role to play there. In fact, the line fixed by Article 2 of the 1935 Treaty was very favourable for France, but it had also appeared as quite acceptable to Italy, which was at the time unconvinced that the contested regions had any real advantage for Italy[10]. As a result, Italy finally repudiated the Treaty, not simply because it represented for Italy "un résultat singulièrement maigre" from the territorial standpoint[11], but, more importantly, because the Italian Government considered that no such sacrifice of a territorial character should thenceforth be agreed in favour of France in the light of the attitude adopted by France concerning the Ethiopian matter[12].

---

[6] CM, p. 348, para. 9; see, also, LM, para. 5.323.

[7] See, LM, para. 5.343, et seq.; CM, p. 351, para. 20, et seq.

[8] See, CM, pp. 356-357, paras. 39, 41, 43, and p. 372, para. 92.

[9] See, CM, p. 360, para. 49; LM, para. 5.351.

[10] See, CM, p. 346, para. 3; see, also, LM, para. 5.306.

[11] See, CM, p. 360, para. 49. In fact, the reverse was true. The point is not that Italy's territorial gain was meagre; the juridical rights and titles over the Tripolitanian hinterland inherited from the Ottoman Empire that Italy was prepared to abandon under the Treaty involved a huge sacrifice - and for reasons that can without exaggeration be described as criminal. See, para. 8.23, below.

6.07 Libya has no difficulty in accepting the validity of Chad's thesis that, although the 1935 Treaty ("un accord en forme solennelle" subject to ratification) did not enter into force in view of the failure to exchange ratifications, which the Treaty required, the other instruments and joint declarations signed by Mussolini and Laval on the same day entered immediately into effect upon signature, for they were "accords en forme simplifiée" not subject to ratification[13].

SECTION 3. Since the 1935 Treaty Failed to Enter Into Force, the Agreed Boundary Never Took Effect, Leaving the Legal Status of the Boundary Unchanged

6.08 The two Memorials are in full accord on what the consequences were of the 1935 Treaty never entering into force: since the boundary set out in Article 2 of the Treaty never became a conventional boundary, the prior juridical situation was, in the end, not modified[14]. The Parties also agree that the 1935 Treaty's interpretation, in the light of all relevant circumstances, sheds light on just what was the preexisting juridical status the Treaty would have modified. Both Libya and Chad agree, in this regard, that even though the 1935 Treaty failed to enter into force, the Treaty revealed what Italy and France regarded that status to have been[15].

6.09 There is, of course, at this point a fundamental divergence: Libya maintains that the 1935 Treaty confirmed that no boundary existed in the region covered by Article 2 of the Treaty; Chad argues that the Treaty constituted the recognition by Italy and France that "la souveraineté sur la bande d'Aozou appartenait à la France"[16]. This essential point of difference will be discussed shortly. However, it is important to note first that, in spite of this disagreement, the Parties are in full agreement that, quite aside from the question of the Treaty's non-entry into force, the Treaty provides evidence of great probative value as to the situation concerning the boundary that France and Italy recognized at the time.

---

[12] See, CM, p. 372, para. 92.

[13] See, CM, p. 349, para. 12.

[14] See, LM, para. 5.330; CM, p. 211, para. 22; p. 373, para. 93.

[15] See, e.g., LM, para. 5.328; CM, p. 226, para. 76, et seq.

[16] CM, p. 211, para. 22.

SECTION 4. France Failed to Discharge its Obligations to Italy to Provide "Equitable Compensation" Under Article 13 of the 1915 Treaty of London

6.10 The LM points out that the preamble to the 1935 Treaty and the General Declaration each expressed France's acknowledgement that it had not up to then discharged its obligation to Italy flowing from Article 13 of the Treaty of London in the form of providing "equitable compensation" in resolving colonial boundary questions between them in respect to their African colonies. In the Treaty's preamble, the purpose was expressly stated as follows:

> "... de régler d'une manière définitive les questions pendantes au sujet ... de l'Accord de Londres du 26 avril 1915 en son Article 13 ...[17]".

Hence, Italy and France had expressly agreed that, by virtue of the 1935 Treaty, France had finally discharged in full its Article 13 obligations to Italy. Since the Treaty never entered into force, it follows that France's obligations under Article 13 were not extinguished[18].

6.11 The CM endorses this conclusion. After concluding that the Franco-Italian Accord of 12 September 1919 had not exhausted the "créance" created by Article 13[19], the CM goes on to refer to the "carence de la France à s'acquitter complètement des obligations" in question[20], at the same time pointing out that -

> "... l'un des buts principaux de ce Traité était de mettre un terme aux prétentions avancées depuis longtemps par l'Italie, sur la base de l'article 13 du Traité de Londres de 1915 ... Or, en 1935, la

---

[17] LM, International Accords and Agreements Annex, No. 25.

[18] See, LM, para. 5.333, et seq.

[19] CM, p. 201, para. 231.

[20] See, CM, p. 202, para. 232.

> France décida d'accueillir définitivement ces revendications politiques par le Traité Laval-Mussolini[21]."

6.12 The foregoing analysis leads to the following two points. First, Chad has clearly conceded that France never fully discharged its Article 13 obligations to Italy, a result inevitably flowing from the failure of the 1935 Treaty to enter into force. Second, the implication is inescapable that the "compensation équitable" owed to Italy was specifically focussed on Libya's southern boundary.

6.13 Now, as the CM has convincingly pointed out, it was only the 1935 Treaty that failed to take effect due to the failure of ratifications to be exchanged. The other documents signed on the same day ("les accords en forme simplifiée") entered into force at once, in particular, the General Declaration. Under it the two States solemnly declared that -

> ".... les conventions en date de ce jour ont assuré le règlement des principales questions que les accords antérieurs laissaient pendantes entre eux ... et notamment de toutes questions relatives à l'application de l'article 13 de l'accord de Londres du 26 avril 1915."

Accordingly, in an international accord of obligatory force duly entered into, Italy and France publicly acknowledged the link between the Article 13 obligations and the resolution of the question of Libya's southern boundary provided for in Article 2 of the 1935 Treaty. By means of an instrument of international law - the General Declaration - which entered into full effect, the two States declared that the Libyan boundary agreed in the 1935 Treaty represented a mutually satisfactory solution of the territorial dispute between them, in conformity with their international commitments, for it resulted in the definitive settlement of a question that was officially noted up to that time as "pending".

CHAPTER II. POINTS OF DISAGREEMENT BETWEEN LIBYA AND CHAD

6.14 The principal points of disagreement between the Parties concerning the 1935 Treaty and Accords and their impact on the resolution of the Libya-Chad territorial dispute concern the following questions:

---

[21] CM, p. 207, para. 4.

(i) Was the 1935 Treaty an act recognizing the appurtenance to Italy and France, respectively, of territories to the north and south of the line fixed in its Article 2, or was it rather an accord under which France ceded French territory to Italy?

(ii) Did subsequent conduct confirm the validity of one or the other of these hypotheses?

(iii) What effect on the present case has the fact that France, because the 1935 Treaty failed to enter into force, did not fulfil its obligations to Italy under Article 13?

Each of these questions will be considered in turn below.

SECTION 1. Recognition of Appurtenance or Cession of French Territories

6.15 The CM contends that the 1935 Treaty was an agreement transferring to Italy sovereignty over French territories. According to the Chadian thesis -

> "... l'Italie, en signant avec la France un traité international prévoyant la cession en sa faveur d'un territoire africain (la bande d'Aozou) reconnaissait ... que ce territoire était soumis à la souveraineté française: l'Italie n'aurait pu acquérir la souveraineté sur la bande d'Aozou en vertu de l'exécution du Traité que si cette souveraineté appartenait à la France et que celle-ci la lui cédait[22]."

From this it follows, according to the CM, that since the 1935 Treaty never entered into force, the situation confronted is a typical one, well-known to international jurisprudence, one where -

> "... un traité non ratifié portant cession d'un territoire [lequel] confirme que le territoire envisagé par le traité relève de la souveraineté de l'Etat qui aurait dû le céder par le traité en question[23]."

---

[22] CM, p. 207, para. 5.

[23] CM, p. 211, para. 20.

6.16 To be persuasive, this thesis of Chad must establish one prerequisite: that the 1935 Treaty was an accord transferring sovereignty over territories, indeed the disputed territory itself. Nowhere does the CM make such a demonstration. But it seeks to sustain such a thesis with three, seemingly inconsistent, arguments:

- Article 13 of the 1915 Treaty of London, to which the 1935 Treaty was linked, concerned only the rectification of boundaries and, hence, a cession and not an attribution of territory[24];

- The boundary line shown on the map annexed to the 1935 Treaty bears the legend (in Italian): "nuova frontiera meridionale" (new southern boundary)[25];

- Among the 1935 Accords, only the 1935 Treaty was made subject to ratification[26].

These arguments will be considered in turn.

(a) The Article 13 Argument

6.17 The thesis on which this argument rests - that Article 13 concerned only the rectification of boundaries - has been referred to above in the context of the Franco-Italian Convention of 12 September 1919, with cross-references to the full discussion in the LM of Article 13 (where it is shown that an analysis of the text of Article 13 shows the thesis to be wrong). The especially relevant portions of Article 13 are underlined in its English text quoted below:

> "In the event of France and Great Britain increasing their colonial territories in Africa at the expense of Germany, those two Powers agree in principle that Italy may claim some equitable compensation, particularly as regards the settlement in her favour of the questions relative to the frontiers of the Italian colonies of

---

[24] CM, p. 207, para. 4.

[25] CM, p. 207, para. 7.

[26] CM, p. 208, para. 8, et seq.; p. 350, paras. 14-16.

Eritrea, Somaliland and Libya and the neighbouring colonies belonging to France and Great Britain[27]."

6.18 It is self-evident that "the settlement ... of the questions relative to the frontiers" did not necessarily involve a modification under which France or Great Britain would cede (or transfer its sovereignty over) territory to Italy. Put another way, a whole series of possibilities could fit within the task described in the Treaty. In essence, they would involve either shifting in Italy's favour an existing conventional boundary or establishing a boundary line for the first time in a region contested between the two States. The latter situation would be where a newly established delimitation would reflect the particular claims and aspirations of Italy.

6.19 It is the second possibility to which Article 2 of the 1935 Treaty clearly applies, even according to its text, as the LM shows[28]. Article 4 of the Treaty, in contrast, applied to the first possibility - a cession of territory; for in the case of the boundaries there referred to (Eritrea and the coast of French Somaliland), a modification of the preexisting boundaries was contemplated. That was not the case concerning Libya's southern boundary dealt with in Article 2; and as the LM demonstrates, the differences in the texts of the two Articles bear this out[29].

(b) The Map Allegedly Annexed to the 1935 Treaty

6.20 Chad's argument here reposes on the legend written on the map allegedly annexed to the Treaty, describing the line across Libya's southern frontier provided for in Article 2 of the Treaty in this way: "nuovo confine meridionale" (new southern boundary). The CM argues that such a description meant that the line on the map replaced a different boundary line - and thus implied there had been a "cession" of territory[30].

---

[27] LM, International Accords and Agreements Annex, No. 12.

[28] LM, para. 5.332.

[29] LM, paras. 5.330-5.331. It must, however, be repeated that in fact the solution accepted by Italy as to the delimitation of the Libyan boundary was not at all "in its favour" but, on the contrary, was greatly to its detriment. If the 1935 Treaty had entered into force, it would have involved the renunciation of the legal rights and titles over the Tripolitanian hinterland that Italy had received as Turkey's successor in Libya and that it had constantly relied upon in its relations with France. As has been seen, this renunciation, which explains why France subsequently made such great efforts to induce Italy to ratify the Treaty, was the sacrifice that Italy was prepared to make in order to secure the political support of France for its attack against Ethiopia.

6.21 The argument does not call for extensive discussion. To describe a boundary (or for that matter an automobile) as "new" certainly implies that it is not "old", but no more than that. If someone points out his or her new car, it does not necessarily mean that, before, that person owned a different car. Even if the person had never before owned an automobile, the car being pointed to may accurately be described or referred to as a "new car". It has already been noted above in reference to the Accord of 12 September 1919 that the same words - "nouvelle frontière" - were used to describe the boundary delimited in that agreement, and that, as a matter of law, there had been no pre-existing boundary arising out of the 1902 Accord and map, as Chad maintains, since Italy in 1902 not only did not, but had no legal right to, agree boundaries with France concerning territories which were under Ottoman sovereignty[31].

6.22 In the interest of precision, it is appropriate to add one further point, of rather minor importance. Libya has been informed that this map, which Chad claims to have deposited with the Registrar, was not in fact deposited. Libya's own research indicates that, in fact, no map was actually annexed to the signed document, although such a map is referred to in the Treaty's text.

(c) The Requirement that the 1935 Treaty Be Ratified

6.23 The CM's argument here is that since only the 1935 Treaty, among all the 1935 Accords, was required to be submitted for ratification, it necessarily concerned a cession of territories by France. The reason for this, the CM suggests, was that prior Parliamentary approval in both France and Italy was required in the case of international treaties involving the cession of territory; and thus the requirement of ratification confirmed that the Treaty would have ceded French territory to Italy[32].

---

[30] CM, p. 207, para. 7.

[31] See, para. 4.124, above.

[32] See, CM, p. 208, para. 8, et seq.; p. 350, paras. 14-16.

6.24 It must be said that it is rather hard to understand why the fact that ratifications were considered necessary by both parties to the Treaty, even assuming a question of cession of territory was involved, as Chad maintains, would demonstrate that such a cession would operate as one made by France in favour of Italy rather than the other way around. This is particularly so since, as the CM freely admits, it was Italy who in 1935 agreed to accept a major territorial sacrifice concerning the southern territories of Libya.

6.25 Leaving that question aside, however, it is clear that the 1935 Treaty did in fact concern the cession of French territories to Italy; but this related to the then existing boundaries between Eritrea and the coast of French Somaliland, covered by Article 4 of the Treaty. In other words, quite aside from the question of Libya's boundaries, Article 4 alone required the exchange of ratifications, preceded by authorizing laws enacted by both Parliaments in accordance with the constitutional requirements of each State.

6.26 It must be emphasized here that the surprising thing about this line of argument in the CM, aimed at demonstrating that the Treaty was an agreement to cede to Italy French territory to the south of Libya, is not merely the extreme weakness of the arguments set out in the CM; equally surprising are Chad's omissions: the CM ignores completely a whole series of elements of a decisive character emanating from the text of the 1935 Treaty and its travaux. These all point in the same direction. There was no transfer of territory by France to Italy under Article 2; to the contrary, France recognized Italian title to territories lying north of the 1935 line, while at the same time admitting that no boundary had ever been established in that region - the Libya-Chad borderlands.

6.27 A brief reference to the LM, where the following points are developed, will suffice here[33]:

- The 1935 Treaty's text, in relation to Libya's boundary covered by Article 2, employed the word "détermination", whereas in Article 4 (the boundaries of Eritrea and Somalia) the word used was "substitution";

---

[33] LM, para. 5.327, et seq.

- **The different terms applied to the quite different boundary situations reveal the careful distinction made in the Treaty to express the intentions of the Parties: "détermination" as to Libya's boundary, for there was no preexisting boundary; "substitution" as to Eritrea and Somalia, where an existing boundary was to be modified;**

- **The accompanying press communiqué reflected the same distinction: as to Article 2, "territoires ainsi reconnus comme appartenant à la Libye"; as to Article 4, the "rectification" of a boundary.**

6.28 Among the various elements comprising the travaux, far and away the most revealing and, indeed, decisive among them as to the intent of France as regards Article 2 of the 1935 Treaty was the Exposé des motifs accompanying the law presented to the French Parliament to authorize the Treaty's ratification[34]. In this Exposé, the French Government, publicly and officially, informed the French Parliament that prior agreements -

> **"... laissai[en]t l'Italie et la France sans frontière conventuelle [sic, read 'conventionelle'] à l'Est de Toummo."**

This document advised the French Parliament, in order to convince it to authorize the Treaty's ratification, that this "absence de frontières" was causing difficulties for the local authorities[35]. In passing the law, the French Parliament may be considered to have acted on the basis of this admission by the French Government.

6.29 From the foregoing, as well as the analysis set out in the LM, it is evident that, as regards Libyan territory, the 1935 Treaty was not "un accord de cession territoriale" by France, as Chad maintains; rather, it was an agreement that, after having found no boundary to have existed, established such a boundary for the first time by "reconnaissant" that the territories to the north of the 1935 line "appartenaient" to Libya. As the British Foreign Office analysed the Treaty's effect at the time:

---

[34] **Adopted in March 1935; see, CM, p. 351, para. 21. The Exposé des motifs appears in the LM as Exhibit 56.**

[35] **See, LM, para. 5.337.**

> "The frontier in this area had never previously been demarcated and the effect of the agreement is that France has now definitely recognised as Italian territory the ownership of which had not been previously determined ...[36]."

SECTION 2. Subsequent Interpretation

6.30 The CM attempts to give undue importance to the fact that words like "céder" and "cession" cropped up in a certain number of French and Italian documents, especially between 1935 and 1938. This was a period during which the entry into effect of the 1935 Treaty appeared imminent and various preparatory measures concerning its implementation on the ground were being taken. This involved French and Italian discussions, and communications among the various affected departments and agencies of government. In those documents, even in reference to implementing Article 2, references were made to territories "cédés" by France to Italy or "remis" or to the forthcoming "translation des territoires" in question[37]. On the basis of such elements the CM formulates the argument that the texts -

> " ... de plusieurs documents diplomatiques aussi bien français qu'italiens, ... soulignent tous, en termes absolument clairs et non équivoques, que le Traité prévoyait un transfert de souveraineté de la France à l'Italie[38]."

The CM goes on to argue that these expressions confirmed a posteriori that both parties to the 1935 Treaty had signed "en vue d'effectuer une cession de territoire"[39], and thus, in signing the Treaty, Italy had confirmed -

---

[36] See, LM, para. 5.341, and fn. 407. The text of the fn. is as follows:

"FO briefing memorandum on the 1935 Franco-Italian Agreements, p. 3, date unclear but dating from 1935, FO 371/19492, British Archives Annex, p. 284. It is clear from the context and from the later memorandum first quoted from that 'demarcated' in the quoted passage was used in the sense of 'delimited' or 'determined'."

[37] CM, p. 208, para. 10, et seq.

[38] CM, p. 208, para. 10.

[39] CM, p. 210, para. 19.

> "... d'une manière irréfutable sa reconnaissance de la souveraineté française sur cette zone [*i.e.*, the so-called 'Aouzou strip'] et donc de la frontière 1899-1919[40]."

6.31 As is often the case where there is an abundant use of such phrases as "d'une manière incontestable" and "d'une manière irréfutable", such overstatement invites a closer look. This reveals at once the superficiality of this analysis in the *CM*, for it does not venture beyond just a collection of these words to which the *CM* is content to apply only one among several possible meanings, without regard to the particular context. Placed in proper historical context, these documents cited are obviously dealing with the military situation on the ground and not with the legal rights and titles to the territory concerned[41].

6.32 As was carefully explained in the *LM* in reference to the text and the *travaux* of the 1935 Treaty, and summarized again above, France and Italy had publicly and officially confirmed that no boundary had been agreed between Libya and the French possessions to its south (east of Toummo). Italy had in this borderlands region legal titles opposable to France, as recognized by France. The 1935 Treaty, which had been concluded by the two States in these circumstances, indicated with a precise boundary line their common convictions and reciprocal undertakings. However, these provisions of the Treaty were not a photograph of the situation prevailing on the ground, since during the 1930s France had installed military garrisons in certain places situated within the region under discussion. It will be recalled that after its military incursions into regions north of 15°N latitude, which began in 1913, France withdrew from a large portion of this region; on its side, Italy was not in a position immediately to extend its colonial occupation into the regions of southern Libya to which rights and titles had been conferred on it by the 1912 Treaty of Ouchy. However, at the end of the 1920s, it was in fact in order to head off Italy as it progressed southward that the French Government decided to return to the northern borderlands and to establish a few military garrisons in the region, including areas that under Article 2 of the 1935 Treaty were to be recognized as belonging to Italy's colony of Libya.

---

[40] *Ibid.*

[41] *See*, also, para. 8.25, *et seq.*, below. It is evident that the meaning of "céder" is not restricted to an operation where sovereignty over territory is passed from one State to another. The *Dictionnaire de l'Académie Française* (1931) offers this other definition: "Céder: laisser; abandonner une chose à quelqu'un". And it offers this example: "céder sa place, son tour à un autre". *Le Petit Larousse* (1988) defines "céder" to include "abandonner (ce que l'on a, ce que l'on occupe"). The Latin origin of "céder" is the verb "cedere", which means in French "s'en aller", an expression not linked in meaning to the concept of a transfer of sovereignty.

6.33 It is important to bear in mind what has already been pointed out by Libya here and in its Memorial: France's policy of infiltrating northward, and stationing troops in some locations falling within territories that Italy regarded as under its sovereignty, gave rise to repeated protests from the Italian Government, between 1930 and 1935, officially addressed to the French Government. Chad has readily admitted this fact[42]. In short, the presence of French forces in certain locations that the 1935 Treaty was to recognize as belonging to Italy, and which Italy had protested as illegal on a number of occasions prior to 1935, was a practical matter to be dealt with. The task of putting into effect Article 2 of the Treaty thus appears from the evidence to have consisted of a combined effort leading to the handing over to Italy of control over these places. In other words, French forces were to withdraw from these installations at the same time as Italian forces moved into the territories concerned[43].

6.34 Given this situation on the ground, it was perfectly natural that Italian as well as French documents should speak of a "cession" in referring to the forthcoming implementation of Article 2 of the Treaty. It is hard to think of another term that would as succinctly describe the various practical steps necessary to carry out the operation intended[44]. It is really quite absurd to pretend that the term "cession" can only be interpreted as implying the recognition by Italy that it possessed no legal title over the territorites in question, other than such title as Italy would acquire by the entry into force of the 1935 Treaty, and that this title belonged to France. This is brought home by the continued Italian protests against French military infiltration into these regions. The situation was quite the reverse. Thanks to this agreed "cession" by France, Italy would have finally been able to exercise the full sovereignty that it had always claimed, both before and after 1935, in accordance with legal titles which had been Italy's quite independently of the 1935 Treaty, and which the Treaty had recognized (although in a very restricted sense insofar as the territorial reach of these lands was concerned).

---

[42] CM, p. 271, para. 243; p. 273; para. 250.

[43] Although these disputed borderlands had never been occupied by Italy prior to 1935, Ottoman forces had effectively occupied them, starting in 1908. It was the Ottoman title inherited by Italy in 1912 that the 1935 Treaty recognized in respect to the lands north of the 1935 line.

[44] It was for similar reasons that Foreign Minister Laval, in the speech he made before the French Senate on 26 March 1935, replied to criticism from the opposition by stating that the "concession" made to Italy was in fact of very little value, and used the word "cession" in this regard (see, LM, para. 5.339). Indeed, what the 1935 Treaty did was to obligate France to withdraw its troops from the places they had occupied - despite the Italian protests - in the area which was thenceforward recognized as belonging to Italy. Consequently, if the Treaty had entered into force, a "cession" of territory would have occurred, in that the places where French troops were posted would have been given up to the Italians. Given the actual situation on the ground, the fact that both parties spoke of a "cession" is of no significance for the identification of legal titles, in particular for Italy, which was to obtain (although on a very reduced scale) what it had been claiming for a long time; and thanks to the "cession", it would be able thereafter to exercise its sovereignty over the territories in question, in accordance with the legal titles it had inherited from Turkey.

6.35 There is another inconsistency in the CM. Chad itself mentions that Italy had taken the position after 1935 that not just the territories north of the 1935 line belonged to Libya, but regions to the south as well. The Italian Government, in a document cited and annexed by Chad, expressly affirmed in the following terms that, until the 1935 Treaty took effect, regions lying south of the 1935 line continued to appertain to Libya[45]:

> "... l'Italie a toujours considéré comme relevant de la Libye ('pertinenti alla Libia') les régions situées au sud de la frontière établie par les Accords Mussolini-Laval du 7 janvier 1935. Ces Accords n'étant pas encore entrés en vigueur, ladite thèse reste -- c'est évident[46] -- ferme[47]."

How in the light of such explicit declarations, which followed repeated Italian protests against the 1919 Convention, which were equally explicit, can it be maintained with any plausibility, as Chad attempts to do, that Italy had recognized French sovereignty over these regions?

SECTION 3. The Effect of France's Failure to Fulfil its Obligations Under Article 13 of the 1915 Treaty of London

6.36 As mentioned above, the Parties are in agreement that France did not fully discharge its obligations to Italy under Article 13. It remains, therefore, to consider what consequences flow from this failure for the present case.

---

[45] See, CM, pp. 215-216, paras. 36-40; and Annex 204. See, paras. 8.30-8.32, below, for a discussion of other Italian documents in which the same position was taken.

[46] In the Italian original, "come è ovvio".

[47] CM, p. 216, para. 40 and Annex 204.

6.37 The CM deals with the question in only a short passage:

> "... Bien entendu, la Libye ne peut prétendre à aucun droit du fait de la carence de la France à s'acquitter complètement des obligations contractées en 1915...[48]"

Two arguments are advanced to support this conclusion: first, that "equitable compensation" under Article 13 did not necessarily involve Libya's southern boundary; second, that Italy in the 1947 Peace Treaty renounced all rights and titles over its former African colonies. Neither reason is valid, as can easily be demonstrated.

6.38 The first argument has been commented on above[49]. In fact, France and Italy formally recognized that the obligations flowing from Article 13 had a decisive influence on the resolution of their territorial dispute over Libya's southern boundary. By the solemn declaration included in the preambular part of the 1935 Treaty and by another international agreement that entered into force - the 1935 General Declaration, which was one of the 1935 Accords - the two States acknowleged the fact that the boundary line agreed in 1935 represented the solution of this dispute under, and in conformity with, the terms of Article 13. In other words, Italy and France explicitly admitted that no satisfactory, definitive resolution of the territorial dispute concerning Libya's southern boundary could be found without taking into account and applying Article 13 of the 1915 secret Treaty of London.

6.39 As to the second argument, which relies on Italy's renunciation of its colonial rights and titles in 1947, Chad itself has demonstrated that such an argument lacks substance. The general thesis set out in the CM is based on the concept that Libya as successor State to Italy is subject to all the treaties and all the legal arguments that could have been opposed to Italy and are relevant to resolving the present dispute. Surely, Chad does not contend that only the unfavourable arguments are opposable to Libya! It is evident that Libya's inheritance from Italy embraces not only the obligations of Italy concerning boundary questions but also the rights Italy had against France concerning boundary matters at the time Italy renounced its colonial possessions. If, as is clear, Italy surrendered all of its colonial rights in the 1947 Peace Treaty, by the same token, Libya as successor to Italy acquired all of these rights concerning Libya's boundaries at the moment Libya acceded to independence.

---

[48] CM, p. 202, para. 232.

[49] See, para. 6.12, above.

6.40 It is necessary in this connection to underline the point that under the principles of international law, codified by Article 11 of the 1978 Vienna Convention on Succession of States in respect of Treaties[50], State succession not only does not affect "a boundary established by a treaty", but also does not affect "obligations and rights established by a treaty and relating to the régime of a boundary". Thus, as was observed by M. Tammes during the debate on this subject in the International Law Commission -

> "... treaty provisions for the completion of a boundary settlement, by demarcation or otherwise, were inherited by the successor State with the boundary situation already executed[51]."

During the same debate, Mr. Kearney described the kinds of treaty provisions that would survive State succession as including -

> "... means established for the delimitation and determination of the actual boundary line"; and
>
> "... a set of agreed technical rules for the purpose of determining the exact site of the boundary would constitute part of the régime of the boundary[52]."

6.41 It is of great interest to note that this discussion of State succession by the International Law Commission involved the very question that is before the Court in the present dispute. Judge Ago, then a Commission member, raised the question of what consequences flowed from the accession to independence of Libya, Tunisia and Algeria in the light of pre-existing boundary treaties concluded by the Colonial Powers. Judge Ago at the time expressed the view that the pertinent principles of international law not only implied for such successor States that, at the moment of independence "... leurs territoires étaient

---

[50] Reprinted in Am. J. Int'l. L., Vol. 72, 1978, p. 971.

[51] Yearbook of the International Law Commission, Vol. I, 1974, p. 208. (A copy of this page is attached as Exhibit LC-M 29.)

[52] Ibid., p. 218. Exhibit LC-M 29.

limitées par les frontières ainsi établies", but also "... signifient ainsi que ces Etats n'auraient pas pu se prévaloir de la possibilité de faire table rase de ces traités".

6.42 Among the treaties of which the States in question would not be able to "faire table rase", Judge Ago specifically called attention to the 1915 Treaty of London and the obligation under it incurred by France to make "compensations équitables" to Italy[53].

6.43 The I.L.C. based its analysis of this matter on international jurisprudence, which it found fully recognized the principle of continuity of boundary régimes. The I.L.C. recalled that the Permanent Court in the Free Zones of Upper Savoy and the District of Gex case[54] had made -

> **"... a pronouncement which is perhaps the most weighty endorsement of the existence of a rule requiring a successor State to respect a territorial treaty affecting the territory to which a succession of States relates[55]."**

Again in the Temple of Preah Vihear case[56], according to the I.L.C.'s analysis -

> **"... both parties seem to have assumed that, in the case of a newly independent State, there would be a succession not only in respect of a boundary settlement but also of treaty provisions ancillary to such settlement[57]."**

6.44 It is thus clear, in the light of these various observations, that the "régime of a boundary" referred to in Article 11 of the 1978 Vienna Convention encompasses not only the conventional clauses defining a boundary line, but also those clauses prescribing the rights and obligations relative to the criteria and principles to be followed so as to arrive at the establishment of a boundary that had not prior thereto been fixed. Article 13 of the 1915 Treaty of London certainly belongs to this category of clause, for it prescribes the criteria of

---

[53] Ibid., p. 221.

[54] Free Zones of Upper Savoy and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46.

[55] Y.I.L.C., Vol. II, 1972, p. 298. (Exhibit LC-M 30.)

[56] Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962, p. 6.

[57] Y.I.L.C., Vol. II, 1972, p. 300. Exhibit LC-M 30.

"compensations équitables" in favour of Italy (and hence Libya today, as successor State) to be applied -

> "... dans le règlement en sa faveur des questions concernant les frontières des colonies italiennes ... de la Lybie [sic] et des colonies voisines de la France ...[58]."

6.45 It must be emphasized again that Article 13 is - as its text indicates expressis verbis - a treaty provision related specifically and directly to the question that is sub judice in this case: the intended object and purpose of that Article was to facilitate, among other things, the resolution of the territorial dispute concerning the southern frontiers of Libya. This explains why the obligation that Article 13 imposed on France in favour of Italy is now borne by Chad in favour of Libya, for it concerns an obligation flowing from a treaty that relates specifically to the "régime of a boundary". This stands in sharp contrast to Article 3 of the 1899 Declaration, which cannot in any way be tied to a "boundary régime" since, as explained above and in the LM (and as Chad concedes in the CM), Article 3 did not concern boundaries between sovereign States but, rather, concerned no more than spheres of influence over regions over which neither of the two States concerned (Great Britain and France) exercised at the time territorial sovereignty. It is not possible to envisage a succession between States that stems from undertakings made between Great Britain and France under the 1899 Declaration that neither established a boundary nor concerned the "régime of a boundary".

6.46 Accordingly, Libya may take advantage of Article 13 vis-à-vis a successor State to France, in respect of any disputes between Libya and that State as to the determination of boundaries that were not fixed during the colonial era. The present case presents just such a situation because during the colonial period no boundary was established in respect to the territories lying between Libya and Chad - the borderlands - as both France and Italy publicly recognized in 1935. Such a boundary remains to be determined today, in accordance with the applicable principles of international law and taking into account all the related juridical rights, titles and claims. These would include those that Italy could have asserted against France and, as successor State to Italy, Libya may now assert against Chad, as successor State to France.

---

[58] See, text, LM, International Accords and Agreements, No. 12.

CHAPTER III. CONCLUSIONS

6.47 The above analysis confirms that the 1935 Treaty and Accords have an essential place in the resolution of the present dispute. The Parties agree on this point, just as they agree that the most important of these instruments, the Mussolini-Laval 1935 Treaty, never entered into force, unlike the other Accords of the same day, which did.

6.48 From this starting point, Libya believes the following conclusions emerge concerning the 1935 Accords, based on what has been said above and the rather full discussion in the LM:

- The 1935 Treaty and Accords reveal that Italy and France recognized that prior thereto there had never been established a Libyan southern boundary east of Toummo;

- Thus, Italy and France recognized that the 1935 Treaty was the first international instrument to fix a precise Libyan southern boundary in the borderlands;

- The fixing of this line was not regarded as involving the cession of French territories to Italy; to the contrary, the delimitation of territories under Article 2 of the 1935 Treaty was a recognition of the appurtenance of the territories on either side of the line to Italy and France, respectively; and the subsequent conduct of the two States did not place in doubt this conclusion;

- The 1935 delimitation was very favourable for France, but it was a major sacrifice of Italy's territorial claims in the region, a sacrifice deemed acceptable for reasons of a political character entirely extraneous to Libya and its frontiers;

- Since the 1935 Treaty did not take effect due to the failure to exchange ratifications, the pre-existing situation remained unchanged; thus, after 1935, just as before, no boundary

separated the Libyan and French territories lying to the east of Toummo;

- **In view of the absence since 1935 of any other international treaty establishing such a boundary, such a boundary must be established today in application of the principles of international law currently recognized;**

- **These principles require that Libya and Chad be regarded as successors to Italy and France, respectively, and as a result the Parties to this dispute may invoke, respectively, all rights, titles, claims and arguments that inhered in their predecessors;**

- **In particular, in order to establish the boundary between Libya and Chad, Libya may invoke for its benefit against Chad the rights that Italy had to obtain "equitable compensation" from France in resolving the boundary questions that existed between them concerning the regions now comprising the Libya-Chad borderlands.**

PART VII

GOOD FAITH IN THE LAW OF TREATIES

CHAPTER I. INTRODUCTION: DOCTRINE

7.01 Good faith is a principle which permeates the whole of the law of treaties. In the codified law of treaties (the 1969 Vienna Convention on the Law of Treaties), there are five specific references to good faith[1]. The third paragraph of the preamble to the Convention notes that "the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognised". Article 26 of the Convention, incorporating the most fundamental rule of the law of treaties (the pacta sunt servanda rule) succinctly provides:

> "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

Article 31, the general rule on interpretation, commences with the words: "A treaty shall be interpreted in good faith ...". There are further references to good faith (not material in the present context) in Articles 46(2) and 69(2)(b) of the Convention.

7.02 But the principle of good faith applies also in contexts other than those regulated specifically by the codified law of treaties. If Articles 26 and 31 of the Vienna Convention incorporate the good faith principle in the basic rules relating to the performance and interpretation of a treaty, there is no doubt that the good faith principle equally applies at earlier stages of the treaty-making process, notably at the stage of negotiation. Thus a recent commentator has observed:

> "In the international law of treaties, both its codification and its judicial and political application demonstrate that while good faith pervades the whole of this branch of the law, it is particularly prominent in three separate phases of the existence of a treaty: the negotiating phase; the phase of its interpretation and application (much the same thing in practice); and the phase that is the consequence of its performance (including non-performance or misperformance)[2]."

---

[1] Rosenne, S.: Developments in the Law of Treaties 1945-1986, Cambridge, Cambridge University Press, 1989, p. 137. (A copy of this page is attached at Exhibit LC-M 31.)

[2] Ibid., p. 173. Exhibit LC-M 31.

Elsewhere, the same commentator, concentrating on the phase of negotiation, comments as follows:

> "Negotiation is a political operation, at whatever level it is conducted. As such, it is hardly a matter for legal regulation in itself beyond the generality, common to all relationships, that the negotiation must be conducted in good faith and without deliberate deception ...[3]."

In yet another passage, the same commentator gives examples of conduct during the phase of negotiation which can be impugned as demonstrating something less than complete good faith on the part of one of the negotiating States:

> "In the phase of negotiation, it seems that two separate aspects are relevant: the personal conduct of those handling the negotiations, and the conduct attributable to the State or the international organization which gave the negotiators their instructions or endorsed their actions subsequently under a provision such as article 8 of the Vienna Conventions. Nevertheless, some aspects are common in both respects. Thus, uncandidness, whether by the individual representatives or by absent authorities of those amorphous entities, the State or the international intergovernmental organization - apart from its being bad diplomacy and a violation of the standards of diplomatic behaviour - might not in itself invalidate the negotiation unless there was an element of fraud or corruption or the deliberate inducement of an error (envisaged in articles 49 and 50 of the Vienna Conventions). But it could well be taken as an indication that the negotiations were not being conducted in good faith. That would have a forward thrust into the later phases of the existence of the treaty ... In an indirect way the Vienna Conventions themselves may supply pointers to conduct which could be taken as indicating the absence of good faith in the negotiating phase apart from fraud and coercion already mentioned. Examples could comprise misleading information, or concealing information regarding the relevant rules of the internal law (article 46 of the Vienna Conventions), coercion of a representative (article 51), deliberately creating a lack of concordance of plurilingual versions of a treaty (probably to be embraced within the general concept of error), and others are conceivable[4]."

7.03 A similar point of view is expressed by another recent commentator. In a comprehensive study of good faith in public international law, Zoller correctly points out that the codified law of treaties does not envisage the good faith of States as a positive condition for the validity of the conclusion of treaties:

---

[3] Ibid., p. 129. Emphasis added. Exhibit LC-M 31.

[4] Ibid., pp. 173-174. Exhibit LC-M 31.

> "Il n'existe pas en droit positif de texte qui prévoit comme condition de validité de la formation des traités internationaux la bonne foi des Etats. La Convention de Vienne de 1969 se borne à sanctionner les atteintes portées au principe mais ne le définit pas. Il faut en conclure qu'en matière de conclusion des traités, la bonne foi ne peut se définir que par ce qu'elle n'est pas, c'est-à-dire par son contraire.
>
> Obligation de comportement, la bonne foi revêt ici un contenu indéfini et incertain. Elle oblige, en effet, moins à faire qu'à ne pas faire. On tentera d'en préciser le contenu en étudiant, d'une part, la bonne foi au cours des négociations et, d'autre part, la bonne foi entre la signature et l'entrée en vigueur du traité[5]."

Thus, Zoller envisages that, in this particular context, the principle of good faith will be satisfied if neither party displays in the negotiations an intention to harm or to deceive the other party, such as to amount to fraud or corruption, both being grounds which may be invoked to invalidate the consent of a State to be bound by a treaty. She goes on to characterize bad faith during the course of a negotiation as the willingness of a negotiating State to mislead the other negotiating State. But she points out that bad faith alone may not constitute fraud. There must be objective facts, such as the practice of fraudulent manoeuvres. In this context, she cites part of the commentary of the International Law Commission to what is now Article 49 of the Vienna Convention on the Law of Treaties:

> "This expression ['fraudulent conduct'] is designed to include any false statements, misrepresentations or other deceitful proceedings by which a State is induced to give consent to a treaty which it would not otherwise have given[6]."

She argues that fraud is more difficult to prove than error:

> "La réalité apparaît différente, car si le dol crée bien une erreur en la personne de l'Etat qui en est victime, il s'agit d'une erreur provoquée, intentionnelle. Dès lors, il ne s'agit pas seulement pour l'Etat victime de faire la preuve qu'il a été trompé, mais encore il lui faut prouver qu'il a été trompé intentionnellement, à dessein; en

---

[5] Zoller, E.: La bonne foi en droit international public, Paris, Pedone, 1977, p. 49. (A copy of this page is attached as Exhibit LC-M 32.)

[6] Yearbook of the International Law Commission, Vol. II, 1966, p. 245. (A copy of this page is attached as Exhibit LC-M 33.)

> d'autres termes, qu'il a été victime d'une intention dolosive, d'une intention malveillante[7]."

She then gives an example of what might not strictly constitute fraud, at least in the absence of other evidence:

> "Le simple fait d'arguer de ce qu'au cours d'une négociation internationale, un Etat a fait usage, par exemple, de cartes falsifiées ne suffit pas à établir ipso facto la mauvaise foi de celui-ci. L'Etat ainsi mis en cause peut très bien avoir utilisé ces cartes en toute bonne foi, c'est-à-dire dans l'ignorance totale des vices dont elles étaient entachées[8]."

7.04 It is for these reasons that another commentator has explained that:

> "La partie victime d'une manoeuvre dolosive préférera de se cantonner dans le terrain objectif de l'erreur substantielle. Les notes diplomatiques ou plaidoiries sauront utiliser à demi-mot les circonstances de l'affaire pour renforcer une argumentation qui laisse intact l'honneur de l'adversaire[9]."

The same commentator emphasizes the difficulties of proving bad faith and indeed maintains that the nullity of the resulting treaty may be too heavy a sanction for breach of the principle of good faith in the context of its negotiation. He believes that a more appropriate sanction for breach of the principle of good faith in the negotiation of a treaty lies in taking account of this circumstance in the interpretation of the treaty:

> "Aussi la société internationale a-t-elle cherché une sanction plus nuancée qui permette de réprimer la violation de la bonne foi avec efficacité. La mise en oeuvre de la responsabilité internationale, outre qu'elle est difficile à engager, n'offre pas une compensation adéquate. En revanche, il est possible de faire supporter à l'auteur de l'infraction les conséquences de son attitude; l'interprétation du traité apparaît alors comme une véritable sanction juridique[10]."

---

[7] Zoller, op. cit., p. 53. (A copy of this page is attached as Exhibit LC-M 32.)

[8] Ibid.

[9] Cot, J.P.: "La bonne foi dans la conclusion du traité", Revue belge de droit international, 1968, p. 143. (A copy of this page is attached as Exhibit LC-M 34.)

[10] Ibid.

7.05 The late Sir Gerald Fitzmaurice, in his private writings, took a similarly broad view of the scope of the principle of good faith in international law. He argues, inter alia, that the difficulty of obtaining impartial adjudication - or even any adjudication at all - of disputed issues of international law makes or creates for States an added obligation to conform to the requirement of action in good faith, and that:

> "... this very fact may create for States an international legal duty to act uberrimae fidei, not only in the discharge of obligations they acknowledge the law to impose, but also in the exercise of the rights and liberties it confers. The duty of conduct uberrimae fidei, as is well known, normally arises with reference to certain contracts, such as contracts of insurance, where one of the parties, in order to assess the risk or other material factors involved, is obliged to rely on information supplied by the other party, and lying peculiarly, or exclusively, within that party's knowledge. A somewhat similar situation can arise in inter-State relations ...[11]."

CHAPTER II. JURISPRUDENCE

7.06 In this context, Fitzmaurice goes on to refer to a passage from the Judgment of this Court on the merits of the Corfu Channel case where the Court stated:

> "It is true, as international practice shows, that a State on whose territory or in whose waters an act contrary to international law has occurred, may be called upon to give an explanation. It is also true that the State cannot evade such a request by limiting itself to a reply that it is ignorant of the circumstances of the act and of its authors. The State may, up to a certain point, be bound to supply particulars of the use made by it of the means of information and enquiry at its disposal[12]."

In the same case, the Court went on to point out the disabilities under which the victim State labours in such circumstances, and suggested that this might call for a relaxation of the methods of proof:

> "On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other

---

[11] Fitzmaurice, G.: "The Law and Procedure of the International Court of Justice, 1954-1959: General Principles and Sources of International Law", 35 B.Y.I.L. 1959, p. 212. (A copy of this page is attached as Exhibit LC-M 35.)

[12] Corfu Channel, Merits, Judgment, I.C.J. Reports 1949, p. 18.

> State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion[13]."

This passage may not appear at first sight to have much relevance to the present case, but Libya submits that, as will presently be shown, an analogous principle must be applied to any assessment of French conduct during the negotiations leading up to the conclusion of the 1955 Treaty.

7.07 International case law makes little or no mention of the operation of the principle of good faith in the negotiation of a treaty, beyond a few isolated dicta expressed in very general terms. This is not altogether surprising, given the paucity of cases in which doubt has been raised as to the good faith of one or other of the negotiating States. But the isolated dicta are nonetheless of some interest as shedding light on certain aspects of the content of the principle of good faith in the context of treaty negotiations. Thus, in the Nuclear Tests cases, the Court appears to have underlined that the principle of good faith is not confined to issues concerning the interpretation or performance of treaties but has a wider application:

> "One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential. Just as the very rule of pacta sunt servanda in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration[14]."

In the Lake Lanoux arbitration which involved the diversion by France of waters of a river shared by France and Spain, the arbitral tribunal found that the relevant treaties establishing procedures for co-operation in use of those waters at least required France to consult, though not necessarily reach agreement, with Spain with respect to the river diversion. While holding that France had in fact met these obligations, the tribunal went on to declare that:

---

[13] Ibid.

[14] Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974, p. 268, para. 46 and p. 473, para. 49. Emphasis added to "creation".

> "... the reality of the obligations thus undertaken is incontestable and sanctions can be applied in the event, for example, of an unjustified breaking off of the discussions, abnormal delays, disregard of the agreed procedures, systematic refusals to take into consideration adverse proposals or interests, and, more generally, in cases of violation of the rules of good faith[15]."

So also, in the North Sea Continental Shelf cases, the Court, in referring to the obligation of States to enter into negotiations with a view to arriving at an agreement on the delimitation of their respective continental shelves, stated:

> "[T]hey are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it[16]."

7.08 These dicta are admittedly expressed in very broad and general terms and give little in the way of positive guidance as to what the principle of good faith in treaty negotiation requires. But it is submitted that it must certainly include a minimum disclosure by a negotiating State of relevant facts which are peculiarly, or exclusively, within its knowledge and which the other negotiating State has no means of discovering.

CHAPTER III. APPLICATION OF THE PRINCIPLE OF GOOD FAITH IN THE PRESENT CASE

7.09 Libya makes no apology for drawing these considerations to the attention of the Court, for they must be borne in mind in assessing the significance of France's conduct during its negotiations with Italy in 1902, its exchanges with Great Britain in 1922, and, most importantly, its treaty negotiations with Libya in 1955. Libya is not invoking French conduct in the negotiation of the Franco-Italian Accords of 1900-1902 nor in the negotiation of the 1955 Treaty as a ground for invalidating any of these agreements in whole or in part, whether on the ground of fraud or of error. France is not a party to the present proceedings, and Chad cannot be held responsible for any lack of good faith shown by France in the negotiation of treaties pre-dating Chad's independence. However, insofar as Chad relies upon and espouses a claim to title over territories in dispute in the present case based upon agreements originally concluded by France with other powers, Chad must equally abide by the consequences of evidence demonstrating that French conduct in negotiating some of the agreements upon which Chad now relies does not appear to correspond to the conditions required for the proper application of the principle of good faith in the negotiation of treaties.

---

[15] Lake Lanoux Arbitration, 24 I.L.R. 1957, p. 128. (A copy of this page is attached as Exhibit LC-M 36.)

[16] I.C.J. Reports 1969, p. 47. Note also the reference to the duty of the parties "to consult together in good faith" in the Advisory Opinion given by the Court in the case concerning the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, pp. 95-98 (esp. para. 49).

SECTION 1. The Missing Map

7.10 Let us look at the evidence. There is first of all the question of the Non-Annexed Map, the map supposedly annexed to the Additional Declaration of 1899 (but in fact not so annexed). Chad admits that the map was not so annexed[17]. Yet we find that reference is made to "la frontière de la Tripolitaine indiquée par la carte annexée à la déclaration du 21 mars 1899" in the 1902 Franco-Italian Accord. This language could have been used only because the French Ambassador Barrère had represented to the Italian Minister of Foreign Affairs, Signor Prinetti, that a map had been annexed to the 1899 Additional Declaration. It will be recalled that the proposal to make a reference to a map illustrating the boundaries of French possessions vis-à-vis Tripoli had originally been made by the Italian side who suggested that the reference should be to the map annexed to the Anglo-French Convention of 1898[18]. It was only after further discussion between Prinetti and Barrère that the reference was changed to the map supposedly annexed to the 1899 Declaration. It is an irresistible inference that this change was proposed by the French side; and there is some evidence to show that the Italian negotiators were not even shown the Non-Annexed Map until after the exchange of letters of 1902 had been concluded[19].

7.11 Chad appears to rely on various sources to argue that Italy accepted and recognized the southeast line described in Article 3 of the 1899

---

[17] CM, p. 159, para. 65.

[18] See, LM, para. 5.91; and para. 4.113, above.

[19] See, LM, para. 5.93.

Declaration[20]. Chad invokes a speech made by Admiral Canevaro (then Italian Minister of Foreign Affairs) on 24 April 1899, but admits that this speech did not constitute express recognition of the limit of French expansion agreed between France and Great Britain in 1899[21]. Chad also invokes the 1900 Accord as constituting recognition of the boundaries of the French sphere of influence resulting from the 1899 Declaration. But this ignores, or at least severely downplays, the significance of the fact that that part of the Accord relating to the effect of the 1899 Declaration is confined to a unilateral statement by Barrère on behalf of France giving a clear commitment by France not to go beyond the limits set out in the Declaration[22].

7.12 Furthermore, it is clear that Italy's main concern at the time was to ensure that the northernmost limit of the territory on the French side of the line drawn in 1899 did not encroach upon the territory of the vilayet of Tripoli proper, which Italy hoped to "inherit" from the Ottoman Empire. This explains why attention was focussed upon the juxtaposition of potential French territorial claims with the territory of the vilayet of Tripoli proper and why Italy insisted upon the inclusion in Barrère's letter of the phrase "en laissant en dehors du partage d'influence qu'elle sanctionne le vilayet de Tripoli". But of course the territory of the "vilayet of Tripoli" had not been delimited by international agreement, and the identification of its western and southern boundaries had not yet been achieved and could not be achieved without Ottoman agreement. From the Italian point of view, this was part of the purpose of the 1902 Accord - to secure an indication by reference to a map (at least vis-à-vis France) of what was understood to be the western and southern limit of the "vilayet of Tripoli" in the undertaking France had made to Italy in the 1900 Accord. The limit of the vilayet of Tripoli thus clarified in 1902 (and of course it could not be a true boundary since neither Italy nor France had the status to agree a true boundary at the time, the vilayet of Tripoli forming part of the Ottoman Empire in 1902), is of course shown on the Non-Annexed Map as the wavy, dashed line encircling "Tripolitaine" that proceeds from Ghadamès to Ghat in a roughly southerly direction, then from Ghat to Toummo in a roughly southeasterly direction and thereafter veers northwestwards and northwards towards the Mediterranean coast (see Map LC-M 26 referred to in paragraph 4.53 above). Now, it is amply clear from the text of the 1902 Accord itself that the crucial sentence in that agreement (cited at paragraph 5.84 of the LM) refers specifically (and exclusively) to "la frontière de la Tripolitaine" indicated on the map.

---

[20] See, CM, pp. 167-175, paras. 93-118.

[21] See, para. 4.80, et seq., above.

[22] See, para. 4.90, et seq., above.

7.13 The argument that Italy had somehow recognized and accepted the southeast line described in Article 3 of the 1899 Declaration by concluding the 1900 and 1902 Accords with France is thus wholly unfounded. At most the effect of these Accords was to establish that, as between France and Italy (neither of which asserted, or was in a position to assert, a claim to sovereignty over the vilayet of Tripoli at the time), the frontier of Tripolitania was to be taken as being that indicated on the map. In no way can Italy be taken to have recognized, either expressly or impliedly, the southeast line from Toummo described in Article 3 of the 1899 Declaration.

7.14 It may of course be contended that the reference in the 1902 Accord to the map as having been annexed to the 1899 Declaration is of little or no consequence if the view is taken (as clearly it ought to be taken) that the French undertaking was in essence to respect the frontier of Tripolitania as illustrated on the map. This is however to ignore the consideration that France subsequently sought to argue (and Chad still argues) that the 1900 and 1902 Accords represented a recognition by Italy of the southeast line described in Article 3 of the 1899 Declaration. But the French position (and indeed the Chadian position) is fundamentally flawed. On the one hand, Chad (in this respect faithfully echoing previous French arguments) maintains that the 1902 Accord, by referring to the map allegedly annexed to the 1899 Declaration rather than to the text of the Declaration itself, involves an implicit recognition by Italy of the boundary between the French and British zones indicated on that map: this is the essence of Chad's first theory discussed earlier[23]. Almost in the same breath, however, Chad concedes that it was not the boundary between the French and British zones which the 1902 Accord was referring to, but only "the frontier of Tripolitania" indicated on the map[24]. Chad cannot have it both ways. The Court will recall that, in 1930, France likewise sought to argue both of these incompatible theses[25].

---

[23] See, para. 3.01, above.

[24] CM, pp. 181-182, para. 147.

[25] See, LM, para. 5.269, for an extract from the French Note of 5 March 1930 and para. 5.275, for a description of the content of the French Note of 25 June 1930.

7.15 That France persistently (and falsely) represented to all and sundry that a map had been annexed to the 1899 Declaration is attested to by the following additional items of evidence:

- The French Note to the British Foreign Office of 8 December 1922, the content of which is described at paragraph 5.206 of the Libyan Memorial - and this notwithstanding the French Note to Italy of 8 October 1921, admitting that "... ladite déclaration [the Additional Declaration of 1899], contre l'usage, n'est pas accompagnée de carte ou de croquis"[26];

- The French offer to Italy, on 21 December 1928, of a "concession" on the Tripolitanian boundary, the new boundary, which would have left Djado in Italian territory, to meet up with the "frontier traced on the map annexed to the Anglo/French Declaration of 21 March 1899"[27];

- The French representative's statement to the Ad Hoc Political Committee of the UN General Assembly on 13 December 1950, purportedly correcting an earlier mis-statement, where reference is again made to the map annexed to the Additional Declaration of 1899[28];

- The maps conveyed by the French Embassy in London to the British Foreign Office on 12 July 1955, during the Franco-Libyan negotiations preceding the 1955 Treaty[29].

7.16 One of the most poignant ironies of the circumstances surrounding the "missing map" allegedly annexed to the 1899 Declaration is that it was conveyed to Lord Sanderson (then British Ambassador in Paris) on 27 March

---

[26] See, LM, para. 5.189.

[27] See, LM, para. 5.263.

[28] See, LM, paras. 5.392 and 5.395.

[29] See, LM, paras. 5.454-5.456.

1899 and that, in forwarding this map to Lord Salisbury, Lord Sanderson noted that "The French have drawn the line from the Tropic of Cancer to E.S.E. instead of S.E.", and commented that "I do not know that it matters much"[30]. It may not have mattered that much to Great Britain which (rightly) viewed that line in a negative sense as limiting French territorial expansion, and which in any event had no territorial ambitions in the hinterland of Tripolitania and Cyrenaica, as was later to be evidenced by its renunciation of any potential claim in right of the Anglo-Egyptian Sudan to the Sarra triangle. As the evidence amply demonstrates, the overriding concern of Great Britain in concluding the 1899 Declaration was to ensure that a definite limit was put on French expansionist movements eastwards and northwards towards the Nile Valley in the wake of the Fachoda incident. But of course it did matter (and mattered seriously) to the Ottoman Empire and later to Italy and Libya. The fact that the British raised no formal objection (whether at the time or subsequently) to this map (the Non-Annexed Map) by no means carries with it the implication that they agreed with the southeast line as drawn on that map, at least so far as the period from 1899 to 1919 is concerned. It will of course be recalled that the British War Office maps of 1906, 1914 and 1916 show the southeast line of the 1899 Declaration as almost precisely a true southeast line[31].

7.17 From 1919 onwards, it can of course be argued with some degree of plausibility that, at least vis-à-vis France, Great Britain had recognized that the southeast line in the 1899 Declaration terminated at the junction of 19°30'N latitude and 24°E longitude. How France and Great Britain came to agree on the "interpretation" of Article 3 of the 1899 Declaration recorded in the final paragraph of the Anglo-French Convention of 8 September 1919 remains a mystery[32]. As far as the British were concerned, the southeast line, even as "interpreted" in 1919, was still no more than a line dividing spheres of influence, as is evidenced by the position taken by the British representatives when negotiating in 1934 the Italo-Anglo-Egyptian Agreement on the Sarra triangle[33].

---

[30] See, para. 4.60, et seq., above.

[31] See, LM, para. 5.182, and Map No. 63 appearing there, a colour reproduction of which was furnished by Libya to the Registry. See, also, Maps LC-M 14A and 14B referred to in para. 4.18, above, colour reproductions of which have also been furnished to the Registry.

[32] See, para. 4.161 et seq., above.

[33] See, in particular, LM, paras. 5.289-5.290 and 5.295-5.296. See, also, para. 4.230, et seq., above.

Indeed, precisely because Great Britain continued, in 1934, to regard the southeast line, even as "interpreted" in 1919, as a line dividing spheres of influence, it was prepared to acknowledge that the point of intersection of that line at 19°30'N latitude was not binding on Italy.

7.18 As already indicated, Libya is not asserting that the conduct of France over the "missing map" in her relations with Italy and Great Britain was such as to constitute a cause of invalidity of the 1900 and 1902 Accords between France and Italy, whether on the ground of error or fraud. Italy may have been misled as to the status of the "missing map", but at least France informed her, at the latest by 1921, that the 1899 Declaration was not accompanied by a map or chart[34]. As Italy did not thereafter invoke, as against France, any cause of invalidity of the 1900 and 1902 Accords, it must be deemed to have acquiesced in the continuance in force of these agreements (though not of course to the interpretation which France sought to put upon them) throughout the period until the entry into force of the Peace Treaty with Italy of 1947. By the same token, Great Britain, as a party to the 1899 Declaration, the 1919 Convention and the 1924 Protocol and Declaration concerning the boundary of the Sudan, must be presumed to have been well aware of the fact that the 1899 Declaration did not have a map formally annexed to it, despite the persistent attempts by France to mislead her on this point. We know now that a copy of this map was obtained by Lord Sanderson in March 1899 and forwarded to Lord Salisbury on 27 March 1899, as already mentioned; and the diligent researches made by the Foreign Office in December 1922, and again in 1955, confirmed the absence of any map formally annexed to the 1899 Declaration.

7.19 What Libya does contend, however, is that France's conduct over the "missing map" in its relations with Italy and Great Britain is a factor that must be taken into account in the interpretation of those international agreements and acts on which Chad now relies, and in particular the 1899 Declaration, the 1900 and 1902 Accords, the Anglo-French Convention of 8 September 1919, and the 1924 Protocol and Declaration. To the extent that these international agreements and acts are capable of conflicting interpretations, French conduct in persisting to assert that a map was annexed to the 1899 Declaration, when clearly it had not been so annexed, was not only designed to accord to the Non-Annexed Map a status which it did not have, but to strengthen the interpretation which France was putting on these international agreements and acts. Accordingly, if any doubt remains as to the interpretation to be put upon any or all of these international agreements and acts, that doubt should be resolved against the French (and Chadian) interpretation and in favour of the Italian (or British, as the case may be) interpretation. Authority for this proposition can be found in the view expressed by Professor Cot set out in paragraph 7.04 above.

---

[34] See, LM, para. 5.189; see, also, para. 4.205, above.

SECTION 2. The 1955 Negotiations

7.20 But it is in the context of the negotiations between France and Libya leading up to the conclusion of the 1955 Treaty that, on the evidence so far made available, we can see how the French negotiators seeking to operate in accordance with inconsistent, if not conflicting, instructions (as to which, see paragraphs 7.22 and 7.23 below), failed to conduct themselves in accordance with the requirements of the principle of good faith as applicable to the negotiation of treaties. It is one thing for France (whether by design or by carelessness) to endeavour to mislead sophisticated European States such as Italy and Great Britain as to the provenance of a map; it can be argued that Italy and Great Britain were well able to look after themselves and were unlikely to be misled for long. However, a different and, it is submitted, higher standard of good faith is demanded when a sophisticated European State is engaged in negotiation with a newly independent State, particularly when that negotiation bears upon matters that were, at the time, peculiarly within the knowledge of the sophisticated European State.

7.21 This is of course the position as regards the negotiations between France and Libya about "frontiers" leading up to the inclusion of Article 3 (and Annex I) in the 1955 Treaty. It is difficult to form a wholly objective judgment as to precisely how the French negotiators conducted themselves during these negotiations. The detailed records of these negotiations are sparse, particularly on the French side for the July-August negotiations, where they are virtually non-existent; indeed, the CM produces practically nothing in the way of direct travaux bearing on the wording of Article 3 and Annex I of the 1955 Treaty. However, on the basis of the Libyan travaux covering the later stages of the negotiations, and of British records covering both the earlier and later stages of the negotiations, it is possible to draw certain conclusions as to the manner in which the French negotiators confronted what was for them a difficult, if not impossible, task.

7.22 On the one hand, the French Government had been advised by the Governor-General of the A.E.F. on 2 May 1955 that to open up boundary questions in the Franco-Libyan negotiations then being pursued would be very risky, since to request Libya to recognize "les frontières actuelles" would imply that France had doubts as to the strength of its case and would place France in the position of a "demandeur" vis-à-vis Libya. The Governor-General advised the utmost caution and proposed that the 1955 Treaty should simply pose the principle of a future delimitation, the sole basis of such a delimitation being the treaties in force at the date of Libya's independence[35].

7.23 On the other hand, the French Government was clearly anxious to secure a rectification of the portion of the boundary between Ghat and Toummo, which had already been fixed by virtue of the Franco-Italian Accord of 12 September 1919. It is clear from British records that the French negotiators raised this question of rectification of the sector of the boundary between Ghat and Toummo during the first phase of the negotiations (between 3 and 6 January 1955). The Libyan Ambassador in London, on instructions, voiced his concern about this development to the Foreign Office on 6 January 1955, but the Foreign Office were reassured by the French Ambassador in London that the French were simply trying to establish where the line actually ran between Ghat and Toummo under the previous Franco-Italian Accord of 12 September 1919[36]. That in fact the rectifications sought by France in the Ghat-Toummo sector were of considerably greater significance is apparent when an analysis is made of the difference between the Ghat-Toummo line resulting from this Accord and that resulting from the rectification of this line achieved as a result of Annex I to the 1955 Treaty[37].

7.24 Right from the beginning, therefore, the attention of French and Libyan negotiators was concentrated on the French request for rectification of that part of the boundary lying between Ghat and Toummo. Indeed, during the final stages of the negotiation of the 1955 Treaty, a joint expedition was made by a small Libyan-French team to the Ghat-Toummo region to consult with tribal leaders. Whether, and if so, to what extent, the French negotiators may have been influenced in their determination to see this rectification of the Ghat-Toummo sector incorporated into Annex I of the 1955 Treaty itself by their sudden realization that the Franco-Italian Accord of 12 September 1919 could not be regarded as an "acte international en vigueur" within the meaning of the general formula in Article 3 of that Treaty itself, is a matter of speculation. What *does* however emerge from such fragmentary records of the *travaux* as are available to Libya, including the British records of their exchanges with the French, is that the only *substantive* boundary discussions throughout the whole of the Franco-Libyan negotiations in 1955 were directed towards *rectification* of the boundary line in the Ghat-Toummo sector.

---

[35] See, LM, paras. 5.438-5.439; see, also, paras. 3.43, 5.04 and 5.112, above.

[36] See, LM, paras. 5.447-5.448.

[37] See, LM, paras. 5.488-5.490, and Maps Nos. 93-95.

7.25 For the rest, the French negotiators appear to have followed the advice given by the Governor-General of the A.E.F. in his letter of 2 May 1955, and endeavoured, by sleight of hand, to find a general formula whereby both parties would, as regards the boundaries separating Libya from neighbouring French possessions in Africa, agree to abide by the general provisions of the international acts in force as of the date of the creation of the Libyan State. Following the first round of Franco-Libyan negotiations in January 1955, there seems to have been a measure of agreement on a general formula of this kind. However, the French, until quite a late stage in the negotiations, wished to see the precise delimitation on a map completed before the treaty was concluded, whereas the Libyans throughout wished to settle the question of frontier delimitation separately from the 1955 Treaty and were not prepared to accept that the conclusion of the treaty should be made dependent on the proposed delimitation[38].

7.26 At the beginning of the second round of Franco-Libyan negotiations in mid-July, the French abandoned their proposal that the precise delimitation on a map be completed before the treaty was concluded, but took the position instead that the principles of the delimitation should be defined with sufficient precision before the conclusion of the treaty in order to ensure that the subsequent demarcation on the ground should not give rise to difficulties[39]. Even this fall-back position was rapidly given up, no doubt reflecting the entry in the

---

[38] *See*, *LM*, para. 5.445; *see*, also, para. 3.19, *et seq.*, above.

[39] *See*, *LM*, para. 5.457.

Libyan travaux for 20 July confirming the unyielding Libyan opposition to linking the question of frontiers with the proposed treaty[40]. As a final fall-back position, the device of adding to the exchange of letters already prepared to accomplish the rectification of the boundary in the Ghat-Toummo boundary sector a list of the "actes internationaux en vigueur" (that is to say, the Annex I list) may have been seized upon by the French negotiators as a pis-aller, which had the additional advantage (in French eyes) of obscuring the consideration that some of the agreements included in that list were not en vigueur in 1951. This is a matter of speculation, since there is no evidence in the CM of why the list was included in the text of Annex I as late as the beginning of August 1955, the French having assured the British even before the end of July that the boundary question had been satisfactorily resolved.

7.27 It has already been demonstrated that, contrary to the impression sought to be conveyed by the CM, the Libyan negotiating team did not include any experts or specialists in frontier delimitation[41], and that, if for this reason alone, Libya was throughout extremely reluctant to engage in substantive negotiations on the issue. Such records of the negotiations as have so far been made available confirm beyond a peradventure that there was no detailed discussion between the parties of the course of the supposed southern boundary between Libya and French possessions to the east of Toummo or of the "actes internationaux" embodied in the Annex I list. The list was drawn up at the very end of the negotiations in August 1955, and in a hurry as is evident from its content[42]. The time factor alone establishes that Libya was in no position to assess the extent to which any of the listed acts might be relevant to the eventual delimitation of a boundary to the east of Toummo or "en vigueur", having no experts on frontier delimitation on its delegation. It is clear that Libya had made no detailed study of the various international agreements and acts which France was claiming had determined the alleged "boundary" in that sector; no copies had been furnished by the French side. The attention of the Libyan negotiators was firmly focussed on the issue which France had raised concerning the delimitation of the section between Ghat and Toummo, as the Libyan record of the negotiating session held on 28 July fully confirms[43].

---

[40] See, LM, para. 5.459.

[41] See, paras. 3.25-3.28, above.

[42] See, paras. 3.23 and 3.32, above.

7.28 That the Annex I list was drawn up by the French delegation and presented to the Libyan delegation is self-evident, since the texts listed include all those on which France relied for her theory that the "boundary" east of Toummo had already been conventionally delimited, and this notwithstanding that the Exposé des motifs to the draft law presented to the French Parliament in 1935 had specifically conceded that the 1919 Franco-Italian Accord had left Italy and France without a conventional boundary to the east of Toummo, since Italy had always refused to recognize that the line fixed by the 1919 agreements between the French and British spheres of influence was opposable to Italy as a territorial boundary[44].

7.29 Now, it is hardly plausible that, in presenting to the Libyan delegation the list of texts eventually embodied in Annex I to the Treaty, the French delegation would have revealed to Libya the shaky foundations upon which rested the French theory that a conventional boundary to the east of Toummo already existed. It is equally implausible that the French delegation would have revealed to Libya that two of the listed texts (the 1902 Accord and the Franco-Italian Agreement of 12 September 1919) could not in any event be regarded as "actes internationaux en vigueur à la date de la constitution du Royaume-Uni de Libye" (within the meaning of Article 3 of the Treaty), since France had not indicated to Italy within six months of the entry into force of the Treaty of Peace with Italy of 1947 its wish to revive or maintain in force either agreement, as required by Article 44 of the Peace Treaty[45]. In fact, the evidence supports the conclusion that not only were these "actes internationaux" appearing on the Annex I list not produced by the French for examination, they were not even discussed.

7.30 As Libya was wholly reliant on France as to the list of texts of international acts supposedly relevant to the determination of the boundaries separating Libya from French possessions and supposedly in force as of the date of Libya's independence, the situation is not dissimilar to that in which Sir Gerald

---

[43] See, LM, para. 5.460.

[44] See, LM, para. 5.356.

[45] See, para. 3.23, et seq., above.

Fitzmaurice posits an international legal duty of conduct uberrimae fidei as an essential component of the principle of good faith[46]. Chad asserts, inter alia, that Article 3 and Annex I of the 1955 Treaty determined the boundary between Libya and Chad by means of a renvoi to the international acts listed in Annex I. But if, as all the evidence filed so far indicates, France did not disclose to Libya during the 1955 negotiations that Italy had consistently contested that the southeast line described in Article 3 of the Additional Declaration of 1899, as "interpreted" in 1919, was opposable to it, that Great Britain had equally consistently denied that this line constituted a territorial boundary, and, above all, that in the Exposé des motifs to the draft French law approving the 1935 Treaty, the then French Government had declared that the Franco-Italian Convention of 12 September 1919 had left Italy and France without a conventional boundary to the east of Toummo, the only conclusion to be drawn, on the evidence so far available, is that French conduct during the 1955 negotiations does not appear to correspond to the requirements of the principle of good faith as applicable to the negotiation of treaties, and particularly to the standard of utmost good faith (uberrimae fidei) proposed by Fitzmaurice for circumstances in which one of the parties is obliged to rely on information supplied by the other party and lying peculiarly, or exclusively, within that party's knowledge. Libya would indeed contend that the international legal duty of conduct uberrimae fidei applies with heightened force in the context of negotiations between a sophisticated Western European State with a long history of diplomatic activity and a newly independent State with little or no knowledge of international law concerning matters of this complexity or experience in international negotiations and lacking in expertise on the particular subject matter (that is to say, the question of frontiers).

7.31 In the particular circumstances of this case, there is a close link between what Libya contends to be the legal consequences of French conduct in the 1955 negotiations and the contra proferentem rule occasionally applied to the interpretation of treaties. Rousseau asserts that the contra proferentem rule must be understood as having two quite distinct aspects:

- That doubtful provisions in a treaty must be interpreted in the sense most favourable to the State undertaking the obligation;

---

[46] See, para. 7.05, above.

- **That doubtful provisions must be interpreted against the State which drafted them[47].**

By doubtful provisions, Rousseau is clearly referring to provisions which are ambiguous or whose meaning is in doubt.

7.32 It is the second aspect of the *contra proferentem* rule as applicable to the interpretation of treaties that is of interest in the context of the particular circumstances of the present case. It must be admitted at the outset that this second aspect of the *contra proferentem* rule has not been applied very frequently by international tribunals. It is very much an auxiliary rule of interpretation, to be applied as a last resort when all other methods of interpretation have failed to resolve the problem. Nevertheless, the Permanent Court did apply it in the *Brazilian Loans* case in construing the terms of the bonds under consideration in that case:

> **"Moreover, there is a familiar rule for the construction of instruments that, where they are found to be ambiguous, they should be taken *contra proferentem*. In this case, as the Brazilian Government by its representative assumed responsibility for the prospectus, which this representative, who had signed the bonds, had "seen and approved", it would seem proper to construe them in case of doubt *contra proferentem* and to ascribe to them the meaning which they would naturally carry to those taking the bonds under the prospectus[48]."**

7.33 So also, in the award in the *Lusitania* case between the United States and Germany following the First World War, it is stated:

> **"The Treaty [of Peace between Germany and the United States] is based upon the resolution of the Congress of the United States, accepted and adopted by Germany. The language, being that of the United States and framed for its benefit, will be strictly construed against it[49]."**

7.34 Again, in the *Goldenberg* case before the German-Rumanian Mixed Tribunal constituted after the First World War, it is stated in the award, delivered in 1928:

---

[47] **Rousseau, C.: *Droit international public*, Paris, Sirey, Vol. I, 1971, pp. 297-298.**

[48] ***Brazilian Loans, Judgment No. 15, P.C.I.J., Series A, No. 21*, p. 114.**

[49] ***Opinion in the Cases of the Lusitania*, II *R.I.A.A.*, p. 43. (A copy of this page is attached as *Exhibit* LC-M 37.)**

> "La clause discutée impose une obligation à l'Allemagne. Suivant la règle constamement suivie par le Tribunal arbitral mixte roumano-allemand, les clauses de ce genre ne doivent pas être étendues, par voie d'interprétation, au-delà du sens que l'Etat allemand pouvait raisonnablement prêter au texte soumis à son acceptation. La clause ambiguë s'interprète, en principe, contre celui qui l'a redigée[50]."

7.35 Two later awards appear to suggest that this second aspect of the contra proferentem rule can be applied only in the case of the interpretation of an imposed peace treaty. Thus, in the arbitral award in the case between Germany and the Governing Commission of the Saar Territory about the interpretation of the Agreement of Baden-Baden concerning the Pensions of officials of the Saar territory, it is stated:

> "The rule that in case of doubt, the text of a treaty is to be interpreted against the party which drafted it can only be applied when, as in the case of the Treaty of Versailles, one of the parties handed a prepared text to the other party for signature[51]."

So also, in the arbitral award of 1958 in the case of Saudi Arabia v. Aramco it is stated:

> "The rule contra proferentem can have its full effects only in the case of so-called 'adhesion contracts', whose terms are not discussed between the Parties or when, in inter-State relations, one Party hands to the other, for signature, a prepared text which can be modified only in order better to ensure its application, as was the case with the Treaty of Versailles[52]."

7.36 It is submitted that this is to read too much into these dicta. Indeed, in the case of Pensions of Officials of the Saar Territory, the tribunal specifically noted, immediately following the sentence which has been cited, that the Agreement of Baden-Baden, whose interpretation was in issue, had been the subject of lengthy negotiations, precisely on the subject of pensions of officials, and that the parties had gradually arrived at a mutual agreement. The key element accordingly appears to be whether the text, whose interpretation is in issue, has emerged from a process of substantive negotiation.

---

[50] Goldenberg and Son v. Germany, II R.I.A.A., p. 907. (A copy of this page is attached as Exhibit LC-M 38.)

[51] Pensions of Officials of the Saar Territory, III R.I.A.A., p. 1564. Exhibit LC-M 39.

[52] Saudi Arabia v. Arabian American Oil Co., 27 I.L.R. 1959, p. 196. (A copy of this page is attached as Exhibit LC-M 40.)

7.37 In the present case, it is clear that the list of international acts set out in Annex I of the 1955 Treaty was presented to Libya by France and was not the subject of any negotiations. Libya necessarily had to accept that the international acts so listed might be relevant to a future delimitation of those sectors of its boundaries with French possessions which had not yet been delimited, but was in no position at the time to assess whether and how, if at all, they might be relevant. Libya does not contend that the contra proferentem rule can be applied against Chad as regards the paragraph in Annex I to the 1955 Treaty which relates to the rectification of the sector of Libya's boundary between Ghat and Toummo, since that was the subject of substantive negotiations between France and Libya in 1955. But it does contend that the contra proferentem rule can be applied against Chad as regards the interpretation of Article 3 of that treaty, read in conjunction with those international acts listed in Annex I, which arguably relate to the alleged boundary between Libya and Chad east of Toummo.

SECTION 3. Conclusions

7.38 Again, it must be repeated that Libya is not invoking France's conduct in the 1955 negotiations as a cause of invalidity of those provisions of the Treaty relating to frontiers (Article 3 and Annex I), whether on the ground of fraud or of error, despite the fact that this French conduct, in Libya's submission, does not appear to correspond to the requirements of good faith as applicable within the framework of those negotiations. Libya does however contend that French conduct during the negotiations, in much the same way as French conduct over the "missing map", is an important element to be taken into account in the interpretation of the 1955 Treaty. In the light of this French conduct, if any doubt remains as to the interpretation of Article 3 and Annex I, that doubt should be resolved against the French (and Chadian) interpretation and in favour of the Libyan interpretation. Only in this way would the Court be in a position to attribute legal consequences to the failure of a State to live up fully to the requirement of good faith in the negotiation of a treaty where that failure may not by itself constitute a cause of invalidity of the resulting treaty.

7.39 Subsidiarily, Libya would invoke the contra proferentem rule applicable to the interpretation of treaties as regards the interpretation of Article 3 of the 1955 treaty, read in conjunction with those international acts listed in Annex I which arguably relate to the frontier between Libya and Chad east of Toummo.

PART VIII

THE MYTH OF RECOGNITION, ACQUIESCENCE OR CONSOLIDATION OF THE BOUNDARY CLAIMED BY CHAD

CHAPTER I. INTRODUCTION: THE BASIS OF "CONSOLIDATION" AND ITS LIMITS

8.01 Chapter V of Chad's Memorial is entitled "La consolidation de la ligne frontière jusqu'en 1955". Although the concept of "consolidation" is not, as such, defined or described, it becomes clear from Chad's treatment of the material that Chad envisages thereby an amalgam of "recognition", "acquiescence" and absence of protest (or "silence") which combine to support or consolidate the boundary Chad claims to have existed since the Anglo-French Declaration of 1899. Chad makes no distinction between (i) the actual title to the territory, initially claimed by France and now claimed to be inherited by Chad, and (ii) the precise boundary which it is alleged was established between what are now Chad and Libya as long ago as 1899.

8.02 The notion of "historical consolidation" has been described by De Visscher in the following terms:

> "This consolidation ... is not subject to the conditions specifically required in other modes of acquiring territory. Proven long use, which is its foundation, merely represents a complex of interests and relations, varying from one case to another, and not the passage of a fixed term ... that are taken into direct account by the judge to decide in concreto on the existence or non-existence of consolidation by historic titles.
>
> In this respect such consolidation differs from acquisitive prescription properly so called, as also in the fact that it can apply to territories that could not be proved to have belonged formerly to another State. It differs from occupation in that it can be admitted in relation to certain parts of the seas as well as on land. Finally, it is distinguished from international recognition - and this is the point of most practical importance - by the fact that it can be held to be accomplished not only by acquiescence properly so called, acquiescence in which the time factor can have no part, but more easily by a sufficiently prolonged absence of opposition ...[1]."

---

[1] De Visscher, C.: Théories et Réalités en Droit International Public, Paris, Pedone, 1960, pp. 255-256, as translated by Corbett. (A copy of these pages is attached as Exhibit LC-M 41.)

8.03 De Visscher saw the Court's Judgment in the Anglo-Norwegian Fisheries Case[2] as supporting this view of consolidation: as something different from tacit recognition, or presumed acquiescence. Acquiescence must therefore be demonstrated as real, and not fictitious or presumed, even though no express act of recognition is required.

8.04 It therefore follows that the acquiescence or toleration, essential to consolidation, requires evidence of knowledge of the rights or title being consolidated. Without such knowledge, there can be no genuine acquiescence. States unaware of the rights or title being asserted can scarcely be said to have acquiesced in their assertion. Thus, in the Anglo-Norwegian Fisheries Case, the Court stressed:

> "The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention [from protest] ...[3]."

8.05 The need for knowledge can scarcely be overstated. As one author has expressed it, "... without knowledge there can be no acquiescence at all"[4]. The emphasis on the need for knowledge emerges clearly in the jurisprudence. In the Alaskan Boundary Case[5], the United States argued that Great Britain had acquiesced in American effectivités. The British reply in argument was:

---

[2] Fisheries, Judgment, I.C.J. Reports 1951, p. 139. Emphasis added. But note the caveat by Sir R. Jennings against reading too much into this Judgment: Jennings, R.: The Acquisition of Territory in International Law , Manchester, Manchester University Press, 1963, pp. 23-28.

[3] Fisheries, Judgment, I.C.J. Reports 1951, p. 139. Emphasis added.

[4] Johnson, D.H.N.: "Acquisitive Prescription in International Law" 27 B.Y.I.L. 1950, p. 347. (A copy of this page is attached as Exhibit LC-M 42.) The tendency to discount knowledge, on the basis that occupation of territory must necessarily be well-known (e.g., Verykios: La Prescription en droit international public, Paris, Pedone, 1934, p. 75), is based on a mistaken view of the notoriety of State conduct. As Fauchille has pointed out, in remote, desert areas, where the acts of State authority are few and dispersed, such notoriety cannot be presumed: Fauchille: Traité en droit international public, Paris, Rousseau, 8th Ed. (1921-1926), 2 Vols., p. 761.

[5] Proceedings of the Alaskan Boundary Tribunal, Washington, Vol. VII, 1903/1904, p. 531; see, also, the Landrean Claim U.S./Peru, R.I.A.A., 1922, pp. 365-366, where the tribunal emphasized the need for knowledge and the failure to put forward a claim.

> "They say all these things were done and we never protested. Well, you cannot protest against a thing you have never heard of."

8.06 Indeed, in the Anglo-Norwegian Fisheries Case, Judges Read and McNair differed from the majority on precisely this point, being unable to agree that the United Kingdom was sufficiently aware of the Norwegian system of straight base-lines[6]. One finds exactly the same principle in Article 45 of the Vienna Convention on the Law of Treaties. The loss of the right to invalidate or terminate a treaty by reason of a State's acquiescence in the continued operation of the treaty occurs only if that State has become "aware of the facts" that would justify invalidation or termination.

8.07 It may well be that knowledge can be proved, as actual or constructive knowledge, without the need to prove express notification of the claim of title by one State to the other[7]. Nevertheless, if Chad is to argue the acquiescence of Libya in the French claims to (i) title and (ii) a precise boundary, the onus is clearly on Chad to prove that Libya did, indeed, have actual or constructive knowledge of both.

8.08 It cannot be the case that a newly-independent State must be regarded as "succeeding" to all knowledge of its predecessor. A legal presumption of that kind would be totally at variance with general experience. Many new States have emerged from a colonial past with little inheritance of archives, and even an incomplete knowledge of the treaties affecting their territory. The situation has been all the worse where States, such as Libya, were devastated by wars brought to their shores, or as in Chad's case, by civil war. Moreover, knowledge is a highly "personal" quality, and just as "personal" treaties are not passed on to successor States, so, too, any "personal" knowledge which Italy, for example, might have acquired cannot be deemed to have been automatically transferred to the newly-independent Libya.

8.09 Thus France, and later Chad, had a clear obligation to ensure that Libya did in fact know of both the claim to title, its legal basis and the precise boundary line for which Chad now argues. This obligation is all the more apparent in the context of treaty negotiations concerning boundaries; for, as demonstrated above, France in 1955, and even Chad at a later stage, had an obligation to spell out to Libya precisely what territory was claimed, and what was the basis of that claim.

---

[6] I.C.J. Reports 1951, pp. 180, 205.

[7] In the Island of Palmas Case, op. cit., p. 868, Judge Huber rejected the view that formal notification was essential to prove knowledge. See, also, the Clipperton Island Case, op. cit., p. 1110.

8.10 Moreover, such knowledge and acquiescence would have to continue for as long as the assertion of title continued. For, just as Judge Huber insisted in the Island of Palmas Case[8] that a valid title must be acquired - if occupation be the basis of title - by a continuous and peaceful display of sovereignty and maintained according to "the conditions required by the evolution of the law", so authors have more recently argued that consolidation must meet the same test. Thus, Johnson writes:

> " ... every title under international law must undergo a continuous process of 'maintenance' or 'manifestation' ... It is submitted that the process of 'maintaining' or 'manifesting' a title ... is in essence a process of 'consolidation,' different in degree perhaps, though certainly not in kind, from the 'consolidation' by which a title may sometimes be acquired in the first place[9]."

8.11 It follows from this that any concept of "acquiescence" must not only require continuing evidence of consent - continuing throughout the period over which title has to be maintained - but, in addition, such acquiescence must encounter, and comply with, the requirements of law as they evolve. This is dictated by the notion of "inter-temporal law".

8.12 And from this it follows that, from the time when the acquisition of territory by force was prohibited, that is to say from 1919 onwards, and the prohibition could be regarded as jus cogens, no acquiescence was legally possible. In fact, as will shortly be seen in Chapter III, acquiescence in French claims of title did not occur. Italy, in particular, actively contested the French claims throughout this period. Moreover the States directly involved - Italy, Great

---

[8] Island of Palmas Case, op. cit., p. 869.

[9] Johnson, D.H.N.: "Consolidation as a Root of Title in International Law", Cambridge Law Journal, 1954, pp. 215, 223-225. (A copy of these pages is attached as Exhibit LC-M 43.) See, also, Blum, Y.: Historic Titles in International Law, The Hague, M. Nijhoff, 1965, p. 337. The requirement of continuing acquiescence in the maintenance of a title goes some way to meeting the criticism that consolidation in effect allows a party to create its own title by unilateral acts: see, Munkman, A.L.W.: "Adjudication and Adjustment - International Judicial Decision and the Settlement of Territorial and Boundary Disputes" 46 B.Y.I.L. 1972-73, pp. 96-97.

Britain and France itself - remained bound, as parties, to the Covenant of the League and to the Pact of Paris throughout the inter-war years. So their obligation not to recognize or acquiesce in a title acquired in violation of those treaties arose from the treaties themselves, irrespective of the evolution of a general perception amongst States that the prohibition of war had the character of a rule of jus cogens. In the era following the U.N. Charter - and the critical date in the present case is 1951, the date of Libyan independence - the concept of jus cogens could be said to have been expanded beyond this prohibition of force, and to have included the maintenance by force of colonial domination, contrary to the right of self-determination of peoples[10].

8.13 This development is reflected in Article 19 of the draft Articles on State Responsibility adopted by the International Law Commission, which includes in the definition of an international crime (and therefore a violation of jus cogens):

> "(a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;
>
> (b) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination; ...[11]."

8.14 Conduct of this kind, far from providing a basis for establishing a legal title, or a precise boundary, requires the collective response of sanctions[12]. Thus, there can be no question of any "acquiescence" in such conduct[13]. On the contrary, the obligation on all States is not to recognize such conduct as producing any legal right or benefit to the breaching State. Thus, Article 14, paragraph 2(a), of the Draft Articles proposed by Riphagen, as Special Rapporteur to the I.L.C., in his Fifth Report in 1984 provided:

---

[10] See, Frowein, J.: "Jus Cogens" in 7 Encyclopedia of International Law, pp. 327-330; Virally, M.: "Réflexions sur le 'jus cogens'", 12 Annuaire Français de Droit International, 1966, pp. 1-29; and, see, the detailed discussion of international crimes by R. Ago in his Fifth Report on State Responsibility (A/CN.4/291 and Add 1 and 2), paras. 103-155.

[11] Yearbook of the International Law Commission, Vol. II (part 2), 1980, pp 30-34, at p. 32. (A copy of these pages is attached as Exhibit LC-M 44.) See, also, the draft Code of Crimes against the Peace and Security of Mankind, draft Articles provisionally adopted by the I.L.C., Articles 15 and 18: Report of the I.L.C. on the work of its 43rd Session, April-July 1991, United Nations, Official Records of the Forty-sixth Session of the General Assembly, Supp. No. 10 (A/46/10), pp. 198-250.

[12] See, R. Ago's Fifth Report, op. cit., paras. 144-147.

> "2. An international crime committed by a State entails an obligation for every other State:
>
> (a) not to recognize as legal the situation created by such a crime ...[14]."

8.15 This view of the obligations of States is borne out by United Nations practice. Thus, Security Council resolutions concerning, for example, the Golan Heights[15] or, more recently, in relation to Iraq's invasion of Kuwait[16], testify to this principle. The same principle is fully reflected in the resolutions of the General Assembly embodying the Declaration on Principles of International

---

[13] By analogy, States parties to a treaty which is invalid because concluded contrary to jus cogens cannot acquiesce in such illegal conduct and render the treaty operable and enforceable: see, Articles 53 and 45 of the Vienna Convention on the Law of Treaties. The proposition made in the text above simply assumes the same principle operates so as to preclude any acquiescence in a title to territory unlawfully acquired by force.

[14] Fifth Report on the Content, Forms and Degrees of State Responsibility (Part Two of the Draft Articles), by Mr. Willem Riphagen, Special Rapporteur. Report of the I.C.L. on the work of its Thirty-sixth Session, 7 May-27 July 1984, Doc. A/CN.4/380, pp. 4-9 and A/CN.4/380 Corr.1. (A copy of these pages is attached as Exhibit LC-M 45.)

[15] Security Council Resolution 242 (1967), The Situation in the Middle East, of 22 November 1967, United Nations, Security Council Official Records, 22nd Year; Security Council Resolution 252 (1968), The Situation in the Middle East, of 27 April 1968, United Nations, Security Council Official Records, 23rd Year; Security Council Resolution 267 (1969), The Situation in the Middle East, of 3 July 1969, United Nations, Security Council Official Records, 24th Year; Security Council Resolution 298 (1971), The Situation in the Middle East, of 25 September 1971, United Nations, Security Council Official Records, 26th Year; Security Council Resolution 476 (1980), The Situation in the Middle East, of 30 June 1980, United Nations, Security Council Official Records, 36th Year; Security Council Resolution 478 (1980), The Situation in the Middle East, of 30 June 1980, United Nations, Security Council Official Records, 36th Year.

[16] Resolution 662 (1990) of 9 August 1990 decided that annexation by Iraq of Kuwait "has no legal validity" and expressly called on all Members "not to recognise that annexation". Security Council Resolution 662 (1990), The Situation between Iran and Kuwait, of 9 August 1990, United Nations, Security Council Official Records, 46th Year.

Law concerning Friendly Relations[17] and defining Aggression[18]. And there is evidence that conduct denying the right of self-determination is covered by exactly the same principle. Resolutions of the General Assembly on Rhodesia[19], the South African Homeland-States[20] and Namibia[21] testify to this. In all these situations, in which the basis of the illegality was the denial of self-determination, the corollary was seen as an obligation of non-recognition: this is the antithesis of acquiescence.

CHAPTER II. THE QUESTIONS RAISED IN ANY PLEA OF "CONSOLIDATION"

8.16 It is apparent from Chad's Memorial that the material used in an attempt to demonstrate consolidation is used in a loose, impressionistic manner which deliberately avoids the rigorous analysis to which a plea of acquiescence or consolidation ought to be subject.

8.17 In the light of the discussion in the previous Chapter, it would seem necessary to identify specific questions that have to be posed; and they have to be posed separately, in relation to the two distinct claims: (i) title to the territory, and (ii) the evidence of a precise boundary. It is suggested that the questions are the following:

---

[17] General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, of 24 October 1970, United Nations, Official Records of the Twenty-fourth Session of the General Assembly, Supplement No. 30, 1970.

[18] General Assembly Resolution 3314 (XXIX), Definition of Aggression, of 14 December 1974, United Nations, Official Records of the Twenty-ninth Session of the General Assembly, Supplement No. 31 (A/9631), 1974. See, generally, Dugard, J.: Recognition and the United Nations, Cambridge, Grotius Publications Limited, 1987, Ch. 6, "Non-Recognition and Jus Cogens".

[19] General Assembly Resolution 2652 (XXV), Question of Southern Rhodesia, of 3 December 1970, United Nations, Official Records of the Twenty-fifth Session of the General Assembly, Supplement No. 28, 1970.

[20] General Assembly Resolution 31/6A (1976), Policies of Apartheid of the Government of South Africa; The So Called Independent Transkei and other Bantustans, of 26 October 1976, United Nations, Official Records of the Thirty-first Session of the General Assembly, Supplement No. 44, 1976, and General Assembly Resolution 32/105 N (1977), Policies of Apartheid of the Government of South Africa (Bantustans), of 14 December 1977, United Nations, Official Records of the Thirty-second Session of the General Assembly, Supplement No. 45 (A/32/45), 1977.

[21] General Assembly Resolution 2678 (XXV), Question of Namibia, of 9 December 1970, United Nations, Official Records of the Twenty-fifth Session of the General Assembly, Supplement No. 28, 1970.

- Is the conduct in question clear and unambiguous?

- Can such conduct be attributed to Libya[22]?

- Does such conduct by Libya accord with a general attitude of toleration or acceptance of the claims made by France, and now Chad, by interested States generally, so as to constitute consolidation[23]?

- Was the conduct regarded as "acquiescence" based upon full knowledge of the situation, in particular knowledge that the conduct would necessarily and adversely affect any contrary claims the State might have?

- Was any apparent acquiescence in fact vitiated by fraud or deliberate concealment of facts by the party asserting title?

- Was acquiescence legally possible in the given situation, or was it precluded by a norm of a jus cogens character?

8.18 It is in the light of these questions that the alleged evidence of "acquiescence", produced by Chad, must now be examined.

---

[22] This question is especially important insofar as Chad seeks to rely on the conduct of the Italian authorities during their occupation of Libya.

[23] It will be apparent that, whereas estoppel operates to bind a single State (assuming the existence of benefit or detriment so as to create the obligation), for consolidation of a title one needs the acquiescence of the community at large, or at least of those States generally affected. Title to territory is title erga omnes, so that an estoppel against one State will not suffice to establish such a title in the absence of a general acquiescence. Were it not so, a title unlawfully acquired by conquest, for example, would be validated by the representation of one neighbouring State which created a binding estoppel. See, generally, Bowett, D.W.: "Estoppel before International Tribunals and its Relation to Acquiescence", 33 B.Y.I.L. 1957, pp. 176-202; Dominicé, C.: "A propos du principe de l'estoppel en droit des gens", Etudes en hommage à Paul Guggenheim, Geneva, Institut Universitaire des Hautes Etudes Internationales, 1968, pp. 327-365; MacGibbon, I.: "The scope of acquiescence in international law", 31 B.Y.I.L. 1954, p. 147.

CHAPTER III. THE ELEMENTS OF "CONSOLIDATION" ADDRESSED BY CHAD

8.19 Chad relies, first, on "recognition" by Italy of French title, and the so-called 1899 boundary. This "recognition" is supposed to be found in the abortive 1935 Treaty and the 1938 "Jef-Jef incident".

SECTION 1. Italy's "Recognition" by Virtue of the Laval-Mussolini Treaty of 1935

8.20 In essence, Chad's argument is that Italy pursued its political ambitions ("réclamations politiques") on the basis of Article 13 of the 1915 Treaty of London; that what was envisaged was a "cession" of French territory to Italy (the "Aouzou Strip"); that this is confirmed by both French and Italian documents[24]; and that this therefore confirms French title.

8.21 It may be noted, initially, that Chad nowhere explains why the views of the Italian Foreign Ministry in 1935-1937 are attributable to Libya some 15 years later. Had a boundary treaty actually been concluded, then Libya, as successor State, might well have succeeded to that boundary. But that is because a boundary treaty, like a conveyance of land, operates and fixes the territorial limits that future sovereigns must then respect. But there is no reason why succession operates on occasional opinions expressed by a predecessor State; and Chad gives none.

8.22 Be that as it may, the depiction of the 1935 Treaty by Chad is totally misleading. First, Italy's claim to have succeeded to the rights of the Ottoman Empire was acknowledged by declarations of both Great Britain and France in 1912 immediately after the conclusion of the Treaty of Ouchy; and it was accepted in Article 10 of the 1915 Treaty of London. The Italian proposals in 1919, formulated at the Peace Conference, were based on the right of succession, and Article 13 entered into play only in the sense that Italy believed itself to be entitled to a favourable reception of these proposals. But, in essence, Italy was claiming not a cession of French territory, but recognition of its succession to the title of the Ottoman Empire[25]. And, clearly, the Italian proposals went far beyond the so-called "Aouzou Strip"[26].

---

[24] These are the dispatches of 23 April 1937, 15 December 1937, 27 December 1937 and of uncertain date in 1937, referred to in the CM, pp. 209-210, paras. 15-19. The other argument used by Chad to suggest the Treaty was one of "cession" is the fact that the Treaty was submitted to both Parliaments. See, in this regard, para. 6.23, et seq., above.

8.23 In fact, by 1928 Italy had formally notified France of claims on the basis of inheritance from the Ottoman Empire going as far south as Lake Chad[27]. Thus, from Italy's point of view, the 1935 Treaty contemplated not a "cession" from France, but rather the abandonment of extensive Italian claims based on succession to the Ottoman Empire. For this abandonment of its claims, Italy sought a quid pro quo: French abstention from any criticism of Mussolini's impending attack on Ethiopia. That quid pro quo was not forthcoming, since France formally opposed Italy's action in the League of Nations. And it was because of this that Mussolini abandoned all idea of exchanging ratifications of the 1935 Treaty (and of renouncing thereby the Italian claims)[28].

8.24 Indeed, it becomes difficult to explain the Italian decision concerning the 1935 Treaty on any other basis. For if Italy was gaining territory from France by way of cession, why would Italy not ratify? It had everything to gain and nothing to lose. But if Italy was in fact abandoning genuine claims, the decision not to ratify becomes understandable. France had failed to live up to its side of the bargain, by opposing Mussolini's Ethiopian adventure, so Italy saw no reason why it should abandon its legitimate claims. Thus, Italy saw no reason to make the "notable sacrifices" which the 1935 Treaty involved[29].

8.25 There remains only the apparent inconsistency in the Italian position, revealed in the use of the term "cession" in the four dispatches of 23 April, 15 and 27 December 1937 and of unknown date in 1937[30]. These were inter-departmental memoranda, confined to communications within the Italian Ministries: they were not communications with any foreign Power. Presumably not all the officials of these Ministries were acquainted with Mussolini's grand designs, or of the history of Italian claims. For them "cession" doubtless meant cession of military control rather than cession in the legal sense. And whilst inconsistency or looseness in the use of language may be regrettable, such inconsistencies are an inevitable feature of large, governmental organisations, and their significance ought not to be exaggerated. Indeed, the Court has warned against such exaggeration. In the Anglo-Norwegian Fisheries Case the Court said:

---

[25] See, LM, para. 5.153, et seq.

[26] Of course, this term did not gain currency until the 1970s and was, thus, unknown in 1935. See, para. 1.16, et seq., above.

[27] See, LM, para. 5.256, et seq.

[28] See, LM, paras. 5.303-5.353.

[29] Letter from Count Ciano, the Italian Foreign Minister, 19 December 1938, LM, Exhibit 58.

[30] See, discussion of this term in para. 6.30, et seq., above.

> "[It] is impossible to rely upon a few words taken from a single note to draw the conclusion that the Norwegian Government had abandoned a position which its earlier official documents had clearly indicated[31]."

8.26 Commenting on this statement, Sir Gerald Fitzmaurice shared the view that too much notice need not be taken of superficial contradictions, quoting the Court's opinion in the same case:

> "The Court considers that too much importance need not be attached to the few uncertainties or contradictions, real or apparent, which the United Kingdom Government claims to have discovered in the Norwegian practice[32]."

8.27 That view must be right. In the law of treaties, interpretation is never controlled by isolated words or phrases: these have to be interpreted in the context of the agreement as a whole. So, too, in matters of State conduct the views or beliefs of a State can only be deduced from its conduct viewed as a whole. The occasional inconsistency cannot stand against the more general view, consistently maintained by a State[33].

---

[31] I.C.J. Reports 1951, p. 138. It also may have served internal Italian political interests to make it appear that France was giving up - was "ceding" - territorial rights to Italy.

[32] Fitzmaurice, G.: "The Law and Procedure of the International Court of Justice", 30 B.Y.I.L. 1953, p. 45. (A copy of this page is attached as Exhibit LC-M 46.)

[33] The matter might be otherwise when a State relied on a particular statement, to its detriment, so as to create conditions for an estoppel. But that cannot be the case here. Even had the views in question been expressed to France, rather than in internal Italian documents, the French Government knew full well that Italy claimed the territory (and more) as its own.

SECTION 2. The 1938 "Jef-Jef Incident"

8.28 Chad treats this "incident" as a very significant element in the process of consolidation because, according to Chad, it demonstrates that Italy accepted France's claim to sovereignty over the "Aouzou Strip" and, moreover, because it demonstrates Italy's recognition of "la frontière de 1899-1919" at a point in time when both parties knew that the 1935 Treaty boundary would not take effect[34]. The location of the Jef-Jef Plateau is shown on Map LC-M 9 referred to at paragraph 3.34 above.

8.29 In fact, at the time of this incident, both parties assumed the 1935 Treaty would be ratified and the boundary take effect, although where the line was on the ground was yet to be determined by demarcation. More important, the Italian aide-mémoire of 3 May 1938 cited by Chad[35] did not recognise "la frontière de 1899-1919". It certainly used the phrase "un puit dans la zone comprise entre la frontière actuelle de la Lybie [sic] et la frontière résultant des accords Mussolini-Laval du [sic] 1935". The phrase was exactly the phrase used in the report of the incident made by Balbo, the Italian Governor-General of Libya in reporting to Rome[36], and which was contained in the telegram of instructions sent from the Italian Ministry of Foreign Affairs to the Italian Ambassador in Paris on 26 April 1938. Thus, the Italian Ambassador's aide-mémoire simply used the same language contained in Balbo's original report.

8.30 But it is abundantly clear that by the phrase "la frontière actuelle" Balbo was simply describing an existing, factual situation, based on the current disposition of Italian and French forces. He was not describing a pre-existing, legally recognized frontier, let alone the so-called "frontière de 1899-1919". For Balbo and the Italian Foreign Ministry were well aware of the formal Italian protest of 9 June 1934 against the French garrisoning of Tekro, even further south than Jef-Jef[37]. They were well aware of Italy's protests during the period 1921-1934 against the 1919 line, emerging from the 1919 Convention, as well as of Italy's formal protest of 19 May 1930 against the French military move back into Tibesti[38]. Indeed, Balbo's views of the situation emerge with complete clarity from his dispatch of 1 August 1938 to his Foreign Ministry in Rome:

---

[34] CM, pp. 211-218, paras. 23-47.

[35] See, CM, Annex 199.

[36] See, CM, Production 77.

[37] See, para. 5.87, et seq., above, and LM, para. 5.283.

> "On my part, I note that the agreements of 7 January do not represent a cession to Italy of the territory in question, but simply the recognition of a sovereignty that Italy has constantly and uninterruptedly claimed. It thus seems to me that such sovereignty to be exercised in the area where it is in contrast with the exercise of French sovereignty does not require that the 7 January 1935 agreements be perfected through the exchange of ratifications[39]."

8.31 And, far from there being any disagreement between Balbo and the Italian Foreign Ministry, the Ministry's reply to Balbo on 16 August 1938 was as follows:

> "Ce Ministère Royal connaît bien la thèse, constamment soutenue par nous, d'après laquelle l'Italie a toujours considéré comme relevant de la Libye ('pertinenti alla Libia') les régions situées au sud de la frontière établie par les Accords Mussolini-Laval du 7 janvier 1935. Ces Accords n'étant pas encore entrés en vigueur, ladite thèse reste -- c'est évident -- ferme. La zone dans laquelle a eu lieu l'incident en question est incluse elle aussi dans ces régions[40]."

8.32 And, far from acquiescing in any French claim to sovereignty, the Italian Ambassador was instructed by the Italian Foreign Minister to reply to the Quai d'Orsay in these terms:

> "... l'Ambassade Royale d'Italie, par ordre de son Gouvernement, exprime ses réserves à l'égard de l'affirmation, contenue dans ladite Note, que la région en question est soumise à la souveraineté française, car cette région a toujours été considérée par le Gouvernement Royal comme relevant de la Libye ('pertinenti alla Libia')[41]."

---

[38] See, LM, para. 5.273, et seq., and para. 5.78, above.

[39] CM, Annex 203. An accurate translation of this document has been attached as Exhibit LC-M 47, p. 18 hereto, from which this quotation is taken, along with English translations of CM Annexes 195, 196 and 197, all relating to this incident.

[40] CM, Annex 204. Emphasis added. Chad suggests this reply shows confusion as to the facts, in that it assumed Jef-Jef lay south of the 1935 line. This misreads the text. The reply refers to the whole of the areas claimed by Italy, which did indeed extend south of the 1935 line. And Jef-Jef did lie within those claimed areas.

[41] The CM, p. 217, para. 42, cites this text and refers to Annex 204. This reference must be wrong, since Annex 204 is the Italian Foreign Ministry's reply to Balbo of 16 August 1938.

8.33 In sum, this incident does not support either of the interpretations advanced by Chad. There was no "acquiescence", or recognition, by Italy in either the French claim of title or the so-called "frontière de 1899-1919". In fact the Italian workers sent to dig the wells were not withdrawn until the work was completed. As an element in France's "consolidation" of its title, it is non-existent. In fact, the official view of the Italian Government concerning Libya's southern frontier is explicitly revealed on the maps issued by it at various times. Three such maps are shown here. The map reproduced as Map LC-M 52 was issued by the Italian Ministry of Colonies in 1926. No southern boundary of Libya is shown east of Toummo. The map reproduced as Map LC-M 53 was issued by the Italian Ministry of Colonies in 1937. It shows the 1935 Treaty line. The map reproduced as Map LC-M 54 was issued in 1939 by the Instituto Geografico de Agostini-Novara, after it was announced that instruments of ratification of the 1935 Treaty would not be exchanged. Once again, this map shows no such boundary east of Toummo[42].

SECTION 3. The Debates In, and Measures Taken By, the United Nations : 1948-1952

8.34 Chad's Memorial suggests that, in promoting Libyan independence, the United Nations saw Libya as a State "avec des frontières et un territoire essentiellement incontestés, particulièrement pour ce qui concerne sa frontière Sud"[43]; and that, insofar as disputes over frontiers might exist, "l'Assemblée générale a décidé que ces derniers devraient être résolus par un processus de négociation ..."[44]. However, Chad would have the Court believe that the southern frontier was not in dispute, because "la position française énoncée clairement à propos de la frontière Sud de la Libye"[45] was not disputed, and this Chad suggests testifies to a general acquiescence in the 1899-1919 line.

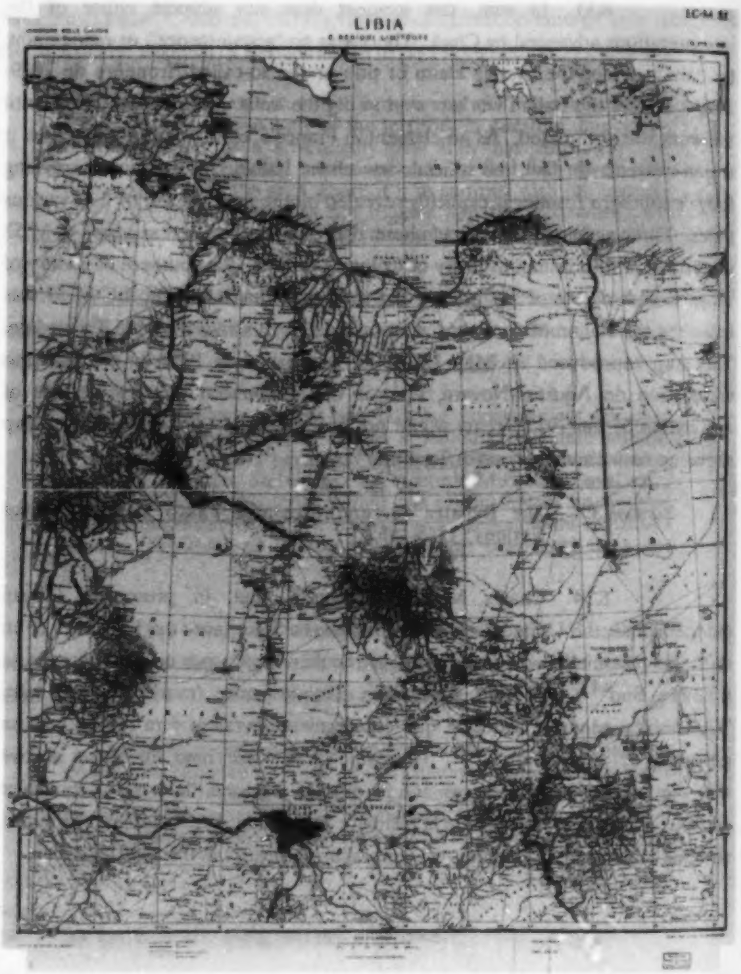
---

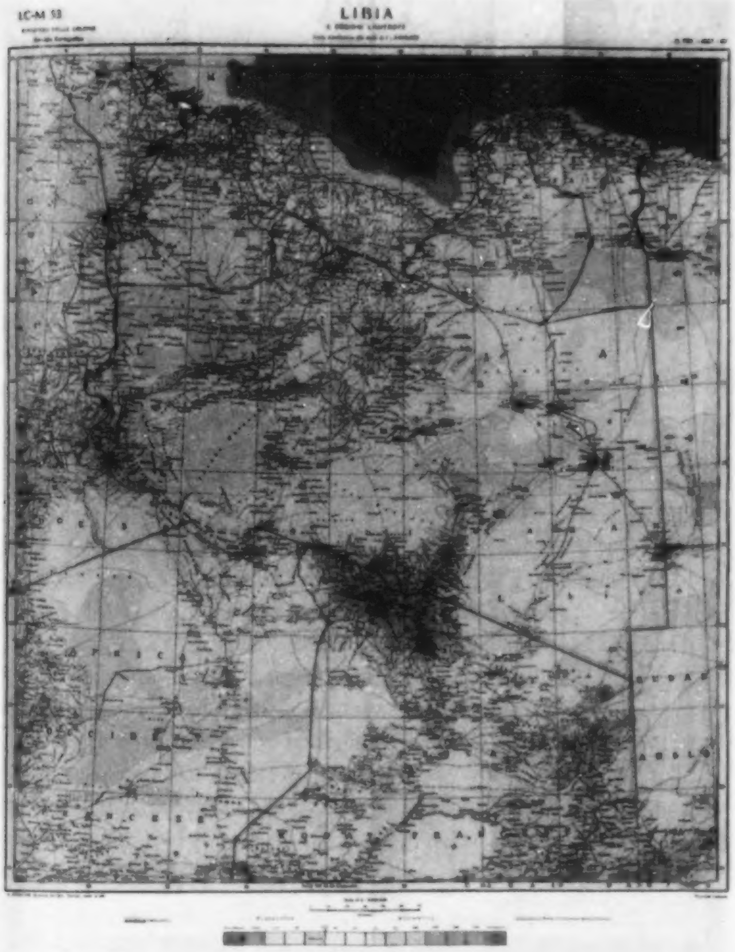
[42] Map LC-M 54 appears in the LM as Map No. 84 at para. 5.352. Larger-size copies of each of these maps have been furnished to the Registry.

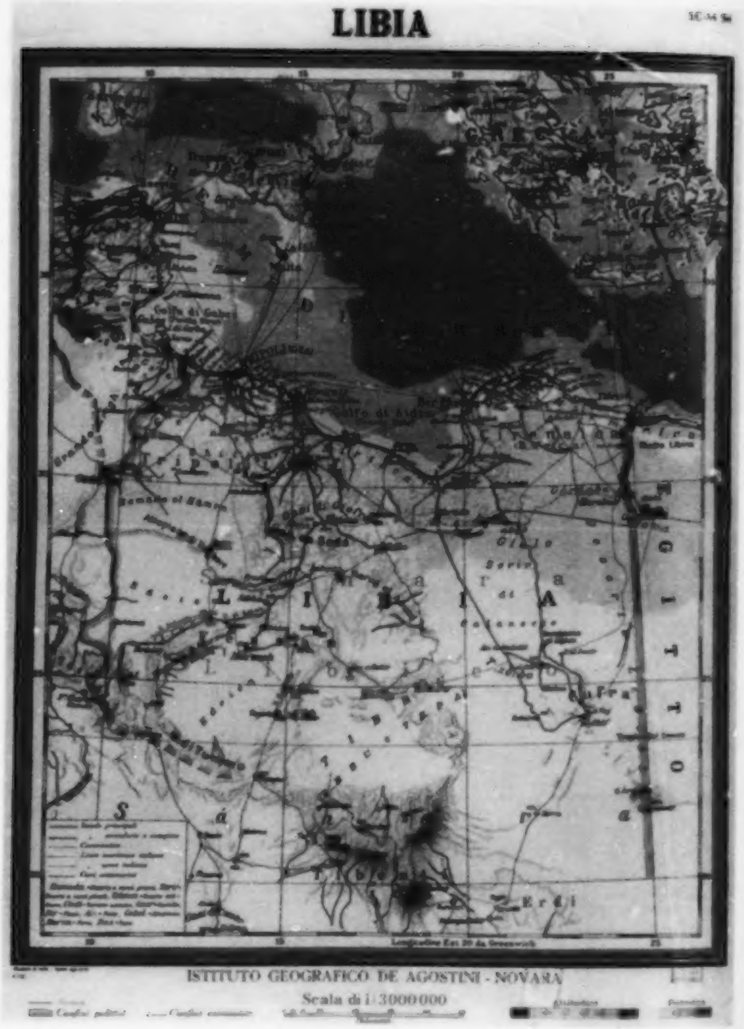
[43] CM, p. 219, para. 48.

[44] CM, p. 219, para. 51.

[45] CM, p. 232, para. 98.


LIBIA
e regioni limitrofe


LC-M 53
LIBIA


LIBIA
Tripoli
Malta
Golfo di Gabes
Golfo di Sidra
L I B I A
EGITTO
Cufra
Erdi
Longitudine Est 20 da Greenwich
ISTITUTO GEOGRAFICO DE AGOSTINI - NOVARA
Scala di 1:3000000
Confini politici

8.35 This view of what happened in the U.N. simply does not accord with the facts. Without repeating the details given in Libya's Memorial[46], it is necessary to recall certain facts.

8.36 First, the maps produced in the United Nations were all at variance on the question of the southern "frontier". The U.N. Secretariat Map produced in January 1950 for use by the Interim Committee showed east of Toummo a line of question marks, in location and direction close to (but not identical with) the abortive 1935 line[47]. Chad suggests that this map was erroneous because prepared with too much haste. In fact, the difficulties facing the Secretariat were considerable. The Secretariat had access to the maps used by the Four Power Commission a few years earlier, in 1948-1949. One map[48] showed a British version of the line, in effect adopting the 1935 line. A different map[49] was attached to the French version of the Report of the Four Power Commission and, in a notation on this map, France pointed to the error in the British map - namely the assumption that the 1935 Treaty was in force - and added a further note to the effect that the southern boundary was governed by a Franco-Italian Protocol of 10 January 1924. This mystified the U.N. Secretariat, understandably so, since no such Protocol existed. Yet a third map[50] had been furnished by France to the Four Power Commission. But this only showed a line as far east as 18°E longitude: it did not show the whole southern boundary. Subsequently, the French delegate to the U.N. Ad Hoc Political Committee explained that the French reference to the Franco-Italian Protocol of 10 January 1924 was an error, and that in reality the operative agreement was the Franco-Italian Agreement of 1 November 1902, which adopted the boundary shown on a map attached to the 1899 Anglo-French Declaration[51]. This, too, was wrong, on two counts: the 1902 Agreement did not concern this southern boundary[52]; and no map was in fact attached to the 1899 Anglo-French Declaration.

---

[46] LM, paras. 5.362-5.397; see, also, para. 3.88, et seq., above.

[47] See, LM, Map No. 87, referred to at para. 5.377. This map appears again above, as Map LC-M 11, referred to at para. 3.92.

[48] LM, Map No. 88, referred to at para. 5.381.

[49] LM, Map No. 89, referred to at para. 5.381.

[50] LM, Map No. 90, referred to at para. 5.381.

[51] For the text of the French delegate's statement, see, LM, para. 5.392.

[52] See, LM, paras. 5.83-5.102; see, also, para. 4.106, et seq., above.

8.37 In the light of this record, the assertion by Chad that the frontier had been "énoncée clairement" by France to the General Assembly seems to be wishful thinking. In fact, France had:

- Misinformed the General Assembly as to the existence of a 1924 Franco-Italian Protocol;
- Misinformed the General Assembly as to the existence of a Map attached to the 1899 Anglo-French Declaration;
- Misinformed the General Assembly as to the geographical scope and legal effect of the Franco-Italian Agreement of 1902; and
- Failed to provide the General Assembly with any authoritative, clear map showing the southern frontier.

8.38 To suggest, therefore, that France had made the position clear, and that the General Assembly had acquiesced in that position, is little short of ludicrous. The General Assembly was clearly not convinced that any clear boundary existed in the south. And that is why Resolution 392(V) provided:

> "That the portion of its boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments ...[53]."

8.39 The CM implies that the General Assembly had in mind only the Libyan frontier with Algeria, because it was on this frontier that France sought rectification. Thus, Chad suggests, the General Assembly was not referring to the southern frontier[54].

8.40 This must be wrong. As we have seen, it was precisely this southern frontier which, on all the evidence, seemed unclear and undelimited to the General Assembly. The frontier with Algeria was delimited, by the Franco-

---

[53] G.A. Resolution 392(V) of 15 December 1950, United Nations, Official Records of the Fifth Session of the General Assembly, Supplement No. 20 (A/173), 1950. LM, Exhibit 2.

[54] CM, p. 227, para. 82.

Italian Accord of 1919. The fact that France sought to change or "rectify" this boundary, so as to place the areas around Ghat and Ghadamès in French territory[55], did not mean the frontier was undelimited. The General Assembly must be deemed to have been aware of the difference between a frontier delimitation and a frontier rectification, and indeed in the proceedings of the U.N. Ad Hoc Political Committee the French representative had stressed this distinction[56]. So, clearly, it was the southern frontier which, above all else, was in the mind of the General Assembly.

8.41 The evidence is, therefore, that the French position was far from clear to the General Assembly; and the General Assembly, far from "acquiescing" in that position, called for a new, negotiated delimitation. This being the case, Chad's references to other, implicit acts of acquiescence in the French position cease to have any real importance[57]. They can be dealt with quite briefly.

8.42 The so-called "silence" of the U.N. Commissioner in Libya, in his Second Report of 30 October 1951, is entirely without significance. The General Assembly had already resolved the matter - in the sense of calling for negotiations - by G.A. Resolution 392(V) of 15 December 1950. The U.N. Commissioner had nothing further to add.

8.43 As to the alleged "silences" of other Member States during the General Assembly debates of 1950-1951, it seems difficult to interpret the discussions in the Ad Hoc Political Committee in December 1950 as a "silence"[58], and the Resolution which finally emerged was, as we have seen, anything but an acceptance of a French "position". The reticence of Italy, which Chad singles out for comment[59], is perfectly understandable. The General Assembly's clear desire was to exclude Italy from any further control in Libya. It would have been tactless for Italy to have intervened forcefully in the debate to re-assert the kind of claims

---

[55] There is a striking paradox between the current emphasis by Chad on the need for stability in the frontiers it claims to have inherited from France and the French desire in the 1947-1948 Four Power discussions radically to alter the existing boundaries.

[56] See, LM, paras. 5.382-5.387.

[57] See, CM, p. 227, para. 82.

[58] See, LM, paras. 5.387-5.395.

[59] See, CM, p. 232, para. 98.

Italy had made to France in the inter-war period. Moreover, at the time Italy participated as an observer, for it was not yet a member of the U.N. And as to the "silences" of the Emir Idriss, the Senoussi leader destined to become the Head of State of the newly-independent Libya, the fact that he specifically opposed the Egyptian claim to rectify the eastern frontier, but said nothing about the southern frontier, is perfectly explicable. There was a concrete, clear Egyptian claim, which called for a reaction. No such "claim" was made by France for the southern frontier[60]: that was a matter which was surrounded by the maximum obscurity.

SECTION 4. Libya's Own Conduct, Post-Independence

8.44 In Chapter III of its Memorial Chad surveys a series of actions by Libya, post-independence, which in Chad's view suggest conduct by Libya itself demonstrating acquiescence in the so-called 1899-1919 line. It is therefore necessary to comment on each of these examples of Libyan conduct.

(a) The "Aouzou Incident" of 1955[61]

8.45 It is clear that the post at Aouzou had been occupied intermittently by French forces between 1930-1937, was abandoned by the French between 1938-1951, manned again by France between 1951-1954, then abandoned again between April-December 1954 and reoccupied at that time only in response to rumours of a Libyan plan to occupy it[62]. But clearly the Libyan authorities believed the oasis to be Libyan when they ordered the expedition to Aouzou to install a Mudir and encouraged the Egyptian expert of the U.N. to return there to complete his census of the population[63]. A French secret report of 12 April 1955 saw the incident as a reflection of "les revendications territoriales libyennes que rend possible l'imprécision de notre frontière"[64]. So in fact the incident as such confirms both the existence of the Libyan claims and the lack of any clearly-defined frontier.

---

[60] See, paras. 3.94-3.100, above.

[61] For more detailed analysis of this "incident", see, para. 3.34, et seq., above, and LM, paras. 5.512-5.517 (The Moya Incident). See, also, Map LC-M 9 referred to at para. 3.34 (fn. 29), above, for the location of Aouzou (and Moya).

[62] See, para. 5.113, et seq., above.

[63] See, CM, Annex 272. See, also, para. 3.38, above.

[64] LM, French Archives Annex, pp. 166-168.

8.46 The only alleged event that might have been a real element of "acquiescence" by Libya relates to the telegraphic report from M. Dumarçay, France's representative in Tripoli, of his meeting with the Libyan Prime Minister Ben Halim, a matter extensively dealt with above[65]. The latter is reported as having confirmed "que son Gouvernement n'avait nullement l'intention de rouvrir la question d'Aouzou, puisqu'il reconnaît que ce village se trouve en territoire français".

8.47 This is the only evidence available of that meeting: we cannot verify the accuracy of the report of what Mr. Ben Halim said from any other source; and it has been noted above that the document presented in the form of Annex 264 to the CM falls far short of acceptable evidence[66]. But if that was indeed said, which Libya does not accept, it must be noted that the alleged statement referred only to the one village of Aouzou. It cannot therefore be treated as an acquiescence in the French claim to the whole of the "Aouzou Strip", an area the size of Switzerland[67]. It was, moreover, an isolated statement quite incompatible with what France perceived to be the whole thrust of Libyan claims. And there must be considerable doubt whether Mr. Ben Halim ever made the statement, or, if he did, whether he made the statement in full knowledge of the facts, in particular whether the whole historical record did, or did not, support the French claim to the area. The more likely explanation, if indeed the statement was made, was that Mr. Ben Halim was in the middle of the crucial negotiations for the 1955 Treaty with France. His primary aim was to get France out of Fezzan, and he was disinclined to allow what he regarded as a trivial incident to jeopardize his chance of securing this result as well as prevailing over France in resolving the issue concerning "reactivation" in the event of war[68]. This was a serious concern at the time; for French forces were in occupation of a large part of Libya and the borderlands (not to speak of the presence of British and U.S. forces), and the climate was one in which Libya was not entirely free to say and do what it wished.

---

[65] See, paras. 3.46-3.59, above.

[66] Ibid.

[67] See, para. 1.16, et seq., above.

[68] See, LM, para. 5.429, et seq.

8.48 There is, in any event, a further factor. The General Assembly had called for negotiations to settle this frontier. It was scarcely to be assumed, by either France or Libya, that the matter would be settled by a unilateral, oral "admission" by the Libyan Prime Minister. Indeed, in the 1955 Treaty itself, France conceded that the frontier remained to be determined according to the annexed list of international acts. France did not regard the frontier as settled on the basis of the reported statement of Ben Halim, as the Quai d'Orsay made clear when it received M. Dumarçay's report[69].

(b) The Negotiations in July/August 1955 Leading to the 1955 Treaty

8.49 Chad's Memorial focusses on the production, during the meeting of 27 July 1955, of a map by Libyan military officers, showing the 1935 line as the boundary[70]. It then notes that, according to Ambassador Dejean's report of the meeting:

> "M. Ben Halim a reconnu ce matin en séance que les accords devraient leur être appliqués. Toute difficulté majeure est ainsi exclue[71]."

8.50 On the basis of this record, the CM concludes that by these actions "[le] Premier Ministre libyen reconnaissa[i]t la souveraineté française sur le Tibesti[72]". As already pointed out above, the CM entirely misses the meaning of Ambassador Dejean's report[73]. The map had not been produced in connection with Libya's southern boundary at all, but rather with respect to Libya's western boundary with Algeria. Ambassador Dejean was reflecting the fact that he was carefully following the French strategy not to refer to any line but only to make a general reference to "actes internationaux en vigueur". In fact, even at this stage in the negotiations, the Annex I list had not yet been tabled by France. As demonstrated earlier[74], Libya did not know the content of the "actes internationaux en vigueur", did not know whether in fact their application could produce a line, and certainly did not know where that line might be. So, on the face of it, there was nothing to which Libya could acquiesce. And France provided neither the texts nor even a map showing where France believed the line to lie[75]. This is the important point about the use of maps during these negotiations: none were produced for purposes of discussing the boundary east of Toummo.

---

[69] See, para. 3.54, above, and CM, Annex 266.

[70] CM, p. 136, para. 116.

[71] CM, p. 136, para. 116, and Annex 268.

[72] CM, p. 136, para. 118.

[73] See, para. 3.61, et seq., above.

[74] See, para. 3.23, et seq., above.

8.51 As the Libyan Memorial has demonstrated, the 1955 negotiations essentially dealt only with the boundary west of Toummo[76]. East of Toummo, beyond agreeing that the matter should be examined in the future on the basis of the international acts in force, the Libyans refused to discuss the boundary since they were not equipped to do so, either in terms of information or experts. In these circumstances the idea that Libya "acquiesced" in any line east of Toummo is clearly unacceptable.

(c) Libya's "Silence" at the Time of Chad's Admission to the United Nations

8.52 The CM suggests that, on the occasion of Chad's admission to the United Nations, Libya was somehow bound to raise its claims as regards the southern frontier; and that failing to do so constituted some sort of acquiescence in the so-called 1899-1919 line[77].

8.53 This is quite unrealistic. Such occasions are ill-suited to raising controversial questions, particularly questions which the Assembly had decided ten years earlier should be resolved by negotiations. Nothing in the admission of Chad to the U.N. required a formal protest by Libya; and the argument that Libya's absence of protest in some way constituted recognition of the alleged 1899-1919 line is simply without substance. However, the CM suggests that there were contemporaneous applications for admission which disclosed political problems - Senegal and Sudan on the one hand, and Congo (Léopoldville) on the other - and that the fact that in relation to those cases the General Assembly delayed a decision on admission suggests, according to the

---

[75] Ibid. This is the more extraordinary since France had provided the British Foreign Office with two maps in May 1955; see, LM, para. 5.454, et seq., and Maps Nos. 91 and 92.

[76] See, LM, paras. 5.442-5.462.

[77] CM, pp. 320-322, para. 115-122.

CM, that the time was equally opportune for Libya to have raised its frontier problem with Chad[78].

8.54 But of course those cases were quite different, and they did not concern a potential frontier dispute. The federation between Senegal and the Sudan (Fédération du Mali) had collapsed only one month before. Obviously the General Assembly had to wait until the situation clarified. Once it became clear that Senegal and Mali had to be treated as two separate States, they were admitted as such, on 28 September 1960, only 8 days after the main resolution admitting a group of eleven former French African territories. Amongst this group was Upper Volta (Burkina Faso). The fact that Burkina Faso made no express reservation about its frontier with Mali did not preclude the parties from bringing their frontier dispute before a Chamber of this Court in 1986. As to the Congo, the problem there was one of representation, for it was for a time unclear which authorities had governmental control.

8.55 A well-established practice in the United Nations makes it clear that, in admitting new Member States, the General Assembly does not wish to be embroiled in frontier disputes.

CHAPTER IV. ELEMENTS RELEVANT TO ANY ARGUMENT OF "CONSOLIDATION" IGNORED BY CHAD

8.56 As indicated earlier, the notion of consolidation of title rests on an assumption of general recognition of such title. Thus, Chad's argument immediately becomes suspect when it is realized that the reactions of important parties - parties directly concerned in the matter of title and delimitation - have been ignored.

SECTION 1. The Attitude and Conduct of Great Britain

8.57 It is clear that Great Britain did not regard the line agreed in the Anglo-French Declaration of 1899 as a territorial boundary, or as an acceptance of French title to the south of that line. Great Britain so assured Italy in 1902[79]. And Great Britain made the same view clear to France itself as late as 1922[80]. Even when the Anglo-French Convention of 1919 was concluded, containing its famous "interpretation" of the 1899 line, the British position remained the same[81]. Moreover this position was based on clear legal advice, for Malkin (Second Legal Adviser to the Foreign Office) advised:

---

[78] CM, p. 321, para. 119.

> "... the two Anglo-French agreements did not and could not affect the rights of Italy in any territory which belonged to her. The question whether any of the territory to which those agreements applied is territory now belonging to Italy depends of course on the question of fact as to how far Turkish sovereignty extended[82]."

8.58 The date of these communications, 1922-1923, is important, for Chad now submits that:

> "... à partir de 1913, la France exerça son autorité souveraine de manière suffisante pour lui permettre juridiquement de consolider son titre de souveraineté sur un territoire allant jusqu'à la ligne définie avec la Grande-Bretagne en tant que limite de sa sphère d'influence[83]."

8.59 The argument now advanced by Chad is that this exercise of French sovereignty over the whole area up to the 1899 line was consolidated and established by 1919[84]. The choice of 1919 arouses curiosity. Was it to allow the Convention of 1919 to appear as a recognition of the extent of French effective occupation? Or was it to avoid the effect of the League Covenant making conquest by force illegal after 1919? The reasons for the choice must remain a matter of speculation. What is clear, as a question of fact, is that France in no sense effectively occupied the borderlands in 1919[85]. For example, French forces had withdrawn from Tibesti in 1916 and did not return, even in minimal numbers, until 1929.

---

[79] See, LM, para. 5.59. This constituted a formal assurance to Italy that the 1899 Declaration could not affect the rights of other Powers, in particular those of the vilayet of Tripoli and the Mutessarifik of Benghazi; so, clearly, recognition of French title was not contemplated. This assurance followed express instructions from the Foreign Office in London: See, LM, paras. 5.105-5.106.

[80] LM, para. 5.60.

[81] LM, para. 5.192, et seq.

[82] LM, paras. 5.202-5.203. See, also, the later British response to Italy by Note Verbale dated 5 February 1923, LM, para. 5.212, et seq.

[83] CM, p. 376, Conclusion 1 (xii).

[84] See. CM. p. 193, para. 191, p. 255, para. 181, and p. 376, Conclusion 1 (xii).

8.60 But, even ten years after French forces first invaded the borderlands in 1913, Britain displayed no awareness of any such French title. To the contrary, for Britain the question was more one of the extent to which Italy could prove it had acquired sovereignty over territory inherited from the Ottoman Empire. And there is no hint of any knowledge of, or acquiescence in, a French claim of title based upon effective occupation.

8.61 Indeed, Britain maintained this position even after World War II. As seen earlier, the British map used by the Four Power Commission in 1947-1948 in fact showed a boundary corresponding more to the 1935 line than the 1899-1919 line[86]. Neither in the Four Power Commission nor in the debates in the United Nations prior to Libyan independence is there any hint of British acceptance of or of acquiescence in the French claim of title[87].

SECTION 2. The Conduct of the Ottoman Empire

8.62 The Ottoman Empire had protested against the 1899 Declaration in March and May of 1899[88], and again in 1902[89]. Moreover the Porte backed up its protests by reinforcing the Ottoman military presence in Tibesti and Borkou[90], so that, at least until 1913 when the Turks withdrew, there could scarcely be any suggestion of either Ottoman "acquiescence" in the 1899 line or French occupation of the borderlands. Indeed, as shown on Map LC-M

---

[85] See, Part V, above; see, also, LM, paras. 4.173, et seq.

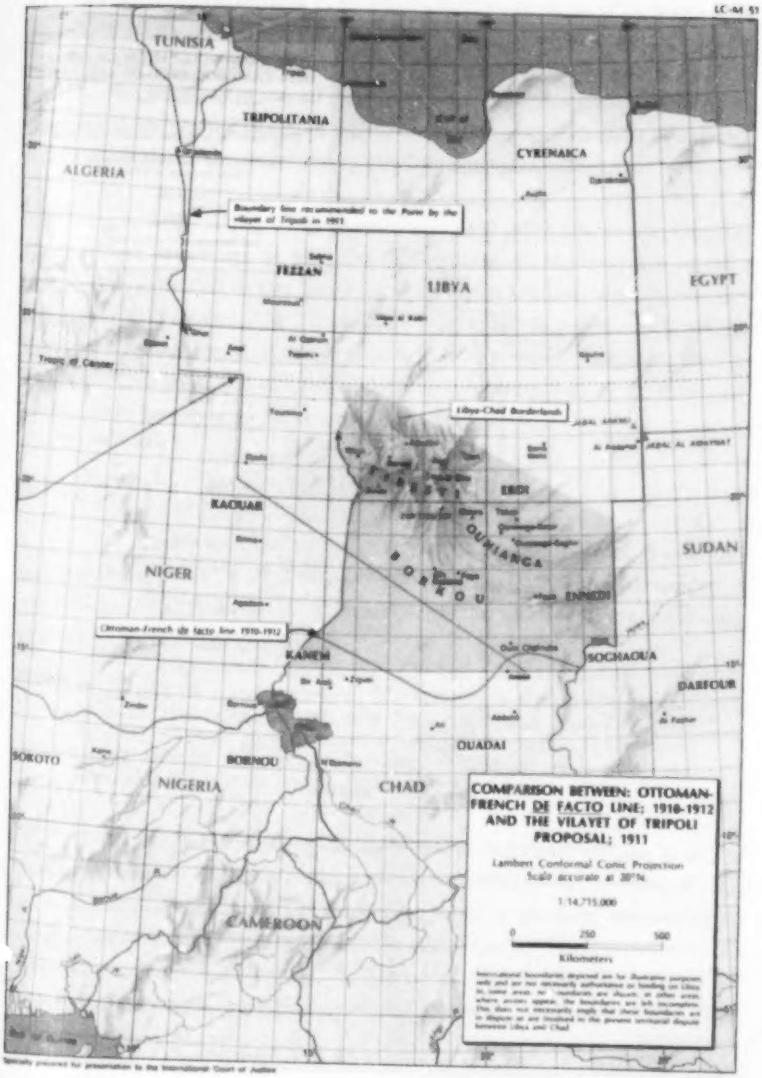
[86] See, para. 8.36, above.

[87] Britain was well aware of the French aim to keep Fezzan and to secure border adjustments with French Algeria and Tunisia; but these were quite separate from the French claim that the boundary in the south was clearly established on the so-called 1899-1919 line.

[88] See, LM, paras. 5.49-5.53.

[89] See, LM, paras. 5.74-5.77.

[90] See, LM, paras. 4.121-4.150, and Map No. 53 referred to at LM, para. 5.116; see, also, para. 5.25, et seq., above, and Map LC-M 28 referred to at para. 4.139, above, which appears here again on the reverse side of Map LC-M 51.


LC-44 51
TUNISIA
TRIPOLITANIA
ALGERIA
CYRENAICA
Boundary line recommended to the Porte by the vilayet of Tripoli in 1911
FEZZAN
LIBYA
EGYPT
Tropic of Cancer
Libya-Chad Borderlands
JEBAL AL AWAYNAT
KAOUAR
TIBESTI
ERDI
OUNIANGA
BORKOU
ENNEDI
SUDAN
NIGER
Ottoman-French de facto line 1910-1912
KANEM
SOGHAOUA
DARFOUR
SOKOTO
BORNOU
OUADAI
NIGERIA
CHAD
CAMEROON

COMPARISON BETWEEN: OTTOMAN-FRENCH *DE FACTO* LINE; 1910-1912 AND THE VILAYET OF TRIPOLI PROPOSAL; 1911

Lambert Conformal Conic Projection
Scale accurate at 30°N

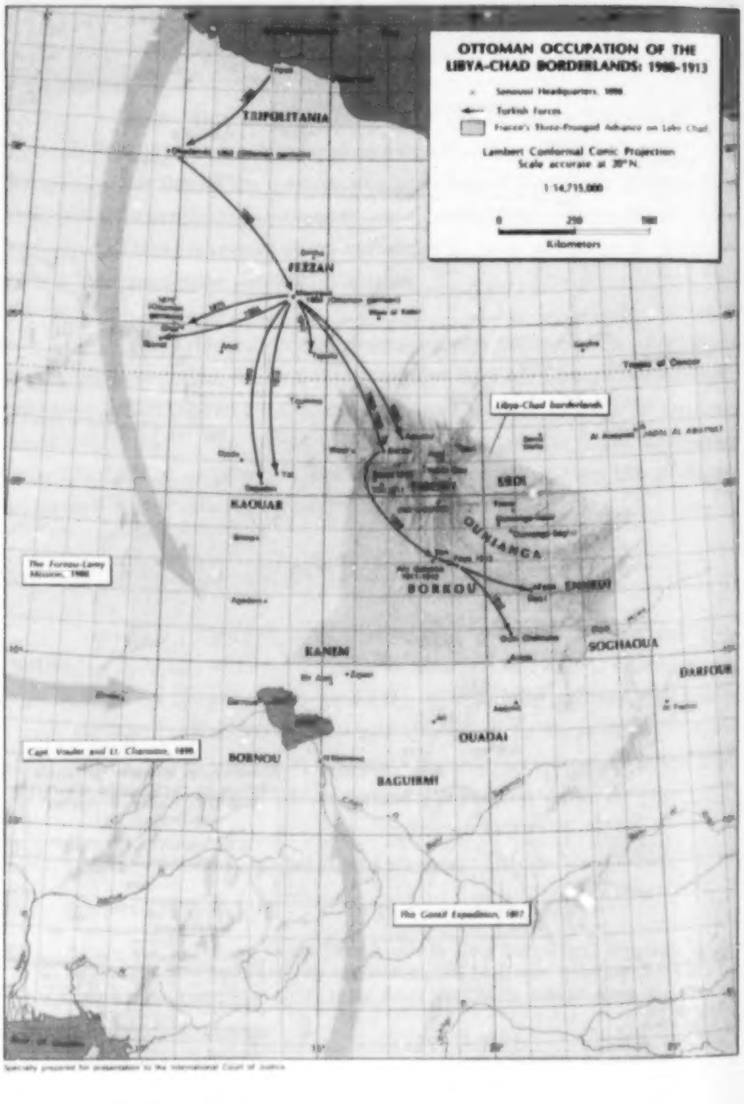
1:14,715,000

0 250 500
Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas no boundaries are shown; in other areas, where portions appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

LC-A4 28


OTTOMAN OCCUPATION OF THE LIBYA-CHAD BORDERLANDS: 1908-1913
Senoussi Headquarters, 1898
Turkish Forces
France's Three-Pronged Advance on Lake Chad
Lambert Conformal Conic Projection
Scale accurate at 20° N.
1:14,715,000
0
250
500
Kilometers
TRIPOLITANIA
FEZZAN
Tropic of Cancer
Libya-Chad borderlands
Al Awaynat
Jabal Al Awaynat
KAOUAR
TIBESTI
ERDI
OUNIANGA
BORKOU
ENNEDI
The Foureau-Lamy Mission, 1900
KANEM
SOGHAOUA
DARFOUR
OUADAI
BORNOU
BAGUIRMI
Capt. Voulet and Lt. Chanoine, 1899
The Gentil Expedition, 1897
10°
15°

Specially prepared for presentation to the International Court of Justice.

51[91], the de facto line, dividing French and Ottoman forces in 1910, left virtually the whole of the borderlands in Ottoman control. This is confirmed by the Ottoman stance in the boundary negotiations, opened with France in 1910-1911[92]. The boundary proposed as a compromise line (thus greatly reducing the Ottoman claims) by the vilayet of Tripoli to the Ottoman authorities would have left the borderlands almost entirely on the Ottoman side.

8.63 Thus, of "acquiescence" in the 1899 line by the Ottoman Empire there is no sign at all. On the contrary, all the evidence shows a determined opposition to that line, backed up by the Ottoman military presence right up to 1913 (Map LC-M 28) when, due to the Italian invasion of Libya, the Ottoman Empire became unable to offer further opposition. Essentially, the CM recognizes this, because it sees consolidation as occurring "à partir de 1913", that is to say after the Ottoman withdrawal.

SECTION 3. The Conduct of the Senoussi

8.64 In trying to demonstrate the consolidation of French title and "acquiescence" in the so-called 1899-1919 line, the CM ignores the conduct of the Senoussi. This omission is untenable in law for, as Chad itself says, sovereignty lay with the Senoussi:

> "Il est aisé de constater que ni la France ni la Grande-Bretagne, après la Déclaration de 1899, ni la France ni l'Italie, après l'Accord de 1902, n'acquérirent de droits souverains sur le B.E.T. en vertu de ces accords. En effet, à l'époque, et jusqu'en 1912, c'était la Senoussia qui exerçait de tels droits sur la région[93]."

8.65 If Chad seeks to imply that, as from 1912 with the Treaty of Ouchy, the Senoussi no longer mattered, because they lost their "sovereignty", this is a misreading of that Treaty. For the Firman issued by the Porte and forming an integral part of the Treaty recognized to the inhabitants of Tripolitania-Cyrenaica "une pleine et entière autonomie"[94]. Moreover, the Ottoman Empire did not itself formally renounce sovereignty until the Treaty of Lausanne in 1923. Thus, whilst the Ottoman Empire and later Italy may have asserted claims to sovereignty to these borderlands on the international plane, they did so fully recognizing that title to the territory rested with the inhabitants, including the indigenous Senoussi peoples inhabiting the borderlands. There existed a "duality" of title, in the sense that, because the Senoussi lacked recognition as a State, it fell to the Ottoman Empire and later Italy to assert and protect that title on the international plane. But they did so at a time when title in the borderlands actually lay with the Senoussi peoples.

---

[91] See, also, LM, Map No. 34, referred to at para. 4.120, thereto.

[92] LM, paras. 4.140-4.143.

[93] CM, p. 254, para. 177.

[94] See, generally, LM, para. 5.130, et seq.

8.66 In any event, irrespective of the formal status of the Senoussi, the Senoussi peoples were the indigenous population of the borderlands, fighting to retain their sovereignty, and so their "acquiescence" in the French claim of title was vital. Even on Chad's thesis that the borderlands were "occupied", such occupation had to be, in the words of Judge Huber, "the continuous and peaceful display of actual power"[95]. And, if the French proceeded by way of conquest, no title could have been acquired by France unless and until the territory was completely subjugated and formally annexed, which never happened.

8.67 Far from "acquiescing", the Senoussi peoples fought the French tooth and nail; and this struggle continued after the Ottoman withdrawal in 1913[96]. So the most fundamental element in any title based on "acquiescence" is entirely lacking.

SECTION 4. The Conduct of France

8.68 It is not suggested that "acquiescence" in the French claim must be sought in the conduct of France itself. But consistency is certainly expected. Without consistency, the French view of its title and the alleged 1899-1919 boundary would lack credibility: in consequence, Chad's own claim, being derived from that of France, would lack credibility.

8.69 The current thesis advanced by Chad is not that the 1899 Declaration as "interpreted" by the 1919 Convention established a frontier, but rather that those texts established a line *which France converted into a true frontier* by virtue of its "occupation" of the borderlands, between 1913-1919[97].

---

[95] Island of Palmas Case, op. cit., p. 857. Emphasis added.

[96] See, para. 5.35, et seq., above; see, also, LM, para. 4.173, et seq.

8.70 The fact is that this was never the thesis advanced by France. The French thesis rested solely on the treaties, never on French *effectivités*; *effectivités* was never a French argument during the 1935 negotiations. The French thesis was stated in terms of the treaties then in force by France's representative before the United Nations[98]; and it was once more stated in those terms by France to Libya itself during the negotiation of the 1955 Treaty. The advice of the French Governor-General of the A.E.F., which was certainly followed, was to:

> "... éviter toute discussion sur le tracé des frontières. Il semble que cette question ne devrait être évoquée dans les accords que pour poser le principe d'une délimitation sur le terrain à entreprendre dans l'avenir, mais en *prenant pour seules bases les traités en vigueur* à la date de la création de l'Etat Libyen[99]."

"*Pour seules bases*"! This advice was inspired, in part, by the concern that Libya might invoke Italian *effectivités* during the 1955 negotiations[100].

8.71 France precisely followed this advice. The 1955 Treaty contained no map, no line and no reference to any *effectivités* by France that purportedly converted the so-called 1899-1919 line into a true boundary. On the contrary, Article 3 of the 1955 Treaty referred only to "les frontières ... [qui] sont celles qui résultent des actes internationaux en vigueur ..."[101].

---

[97] *See*, para. 4.199 *et seq*, above, where this thesis is discussed, with appropriate references to the *CM*, in the context of Chad's second theory.

[98] *See*, the statement by the French representative (M. Naudy) in the *Ad Hoc* Political Committee in 1950, cited at *LM*, para. 5.392.

[99] *LM*, *French Archives Annex*, p. 171. Emphasis added.

[100] *See*, paras. 3.43 and 5.112, above.

[101] *LM*, *International Accords and Agreements Annex*, No. 28.

8.72 It is clear that the basis of title on which Chad now relies is not the basis upon which France relied, and certainly at no time did France argue or demonstrate this basis of title to Libya during the 1955 negotiations[102].

8.73 There are yet two further inconsistencies apparent in French conduct. The 1955 Libyan Petroleum Law and Petroleum Regulation No. 1 were accompanied by an official map, Map No. 1, signed by a Minister of the Libyan Government, showing a boundary that was not the so-called 1899-1919 line; and this occurred only four days after Libya signed the 1955 Treaty. This was an important law adopted by Libya and widely known and publicized. Yet France neither commented on nor protested against these official acts of Libya[103].

8.74 A second, curious inconsistency arose in 1956. A Franco-Libyan Frontier Demarcation sub-committee met on 17 November 1956. The French delegation insisted on considering only the stretch of frontier between Ghadamès and Ghat. They refused a Libyan request to review the frontier as a whole[104]. This meeting, it must be emphasized, was to explore the problems of demarcation of Libya's boundary with Algeria; and demarcation presupposes a prior agreement on delimitation. Yet if, as Chad suggests, there had been agreement on delimitation in 1955 for the boundary east of Toummo, why would France refuse to discuss demarcation there as well? It seems evident that in 1956, as in 1955, France still did not want to face up to a negotiation with Libya to delimit its southern boundary. In fact, as has already been mentioned, the political climate for doing so was very bad indeed[105].

SECTION 5. **The Conduct of Chad itself**

8.75 The conduct of Chad likewise raises an issue of consistency rather than "acquiescence". It has to be emphasized that the current thesis of Chad had never before been publicly expressed, prior to the deposit of Chad's Memorial.

---

[102] Just as, in the 1935 negotiations with Italy, France did not refer to effectivités as a basis for the line it proposed.

[103] See, LM, paras. 5.524-5.526 and Maps Nos. 96 and 97, referred to there.

[104] See, para. 3.107, et seq., above.

[105] See, para. 3.113, et seq., above.

8.76 The year 1966 saw the Libya-Chad Accord[106] in which, although Article 1 referred to the frontiers between the two States, no reference was made to the 1955 Treaty. The 1972 Libya-Chad Agreement of Friendship and Co-operation[107] said nothing whatever about frontiers or of Libya's presence in the borderlands, which had recently occurred following the Tombalbaye letter. And the 1974 Protocole d'Accord[108], over a year after Libya had strengthened its presence in the borderlands, reflected the philosophy of the two States in its Article 2:

> "The frontier between the two countries is a colonial conception in which the two peoples and nations had no hand, and this matter should not obstruct their cooperation and fraternal relations."

8.77 No protest came from Chad at the time over Libya's presence in the borderlands and the events during the period suggest that relations between the two States were good[109]. As late as 1974, there was no hint of the present Chadian thesis. To the contrary, it appeared as though the two States would in due course negotiate anew, free from the colonial legacy and the complex treaties and arguments of colonial provenance on which Chad now relies. This aim had already been reflected in the 1972 Tombalbaye letter[110].

8.78 Finally, on 26 September 1975 General Malloum, the Chadian military leader, referred to the presence of Libyan troops in what he described - at least according to press accounts - as Chad's territory. This was the first official, public recognition by Chad of such a fact; but it was not a protest to Libya, and no reference was made to the legal basis on which the territory was allegedly claimed to be Chadian. Then, in August 1977 came an abrupt change: Chad placed the matter before the O.A.U.; and finally, one year later in February 1978, Chad brought a complaint before the Security Council[111]. It was then that

---

[106] See, LM, para. 5.540, et seq.

[107] See, LM, para. 5.554, et seq.

[108] See, LM, para. 5.557, et seq.

[109] See, para. 5.118, et seq., above.

[110] See, para. 5.119, et seq., above.

[111] See, LM, paras. 5.561-5.564.

Chad explained its legal thesis, the basis of its legal claim to the territory[112]. This was the strict "treaty-thesis", exactly like the thesis France itself had developed before the Ad Hoc Political Committee in 1950. No mention was made of French effectivités converting a line dividing spheres of influence into a true boundary or of the line itself providing the legal basis for the boundary claimed by Chad. Chad put forward then exactly the same thesis that had failed to convince the General Assembly in 1950 and had led to the call to negotiate in G.A. Resolution 392(V)[113].

8.79 Thus, surveying Chad's own conduct as a whole, it scarcely seems like "acquiescence" in the original French thesis, based on the establishment by treaty of the so-called 1899-1919 line.

8.80 It took 18 years for the thesis presented to the U.N. to emerge from Chad, and even then Chad did not take the view it now takes of the basis of French - and therefore Chadian - title. One is left with the suspicion that, but for the civil war in Chad, that thesis would never have emerged at all, and that Chad would have stayed with the commitment expressed in the 1974 Protocole d'Accord, namely to leave aside the legacy of colonialism and resolve any dispute on the basis of cooperation and fraternal relations.

CHAPTER V. CONCLUSIONS

8.81 It is thus apparent that Chad's argument of the "consolidation" of the 1899 line into a true boundary, on the basis of French effectivités and general acquiescence, is a myth.

8.82 It was never advanced by France itself as a basis of title, for France asserted that a boundary existed on the basis of the treaties as such. It was a thesis that Italy did not accept in the 1920s and 1930s, and that the United Nations did not accept in G.A. Resolution 392(V). It was certainly not acquiesced in by Libya, for France denied to Libya the knowledge - of the treaties, of the effectivités relied on, and of the supposed line itself - which would have been essential to any genuine acquiescence by newly-independent Libya.

---

[112] See, CM, p. 327, para. 136.

[113] See, LM, para. 5.394, et seq.

8.83 Moreover, the attitude of various other parties, highly relevant to any argument of general acquiescence, is in contradiction to Chad's "consolidation" thesis. Great Britain did not share it; the Ottoman Empire actively opposed it, as did the Senoussi; and even in the conduct of France and Chad themselves there is no sign of adherence to this thesis.

8.84 The reason why the thesis was never advanced earlier must remain a matter of speculation. One reason - perfectly consistent with the facts - may be that French effectivités were insufficient to establish title and certainly to identify a precise boundary. Another reason may be that France understood perfectly well that, after 1919, it was precluded by law from acquiring title by conquest. Still another reason may be France's awareness that in 1935 France and Italy had settled Libya's southern boundary and that, in the light of the failure of that boundary to take effect, the situation reverted to the status quo ante: the existence of no conventional boundary east of Toummo, as the French Government had informed the French Parliament in the 1935 Treaty's Exposé des motifs, making short shrift of the "consolidation" argument as of 1935. The reason why Chad now advances this thesis is for Chad to explain and justify, and that is not done in Chad's Memorial.

PART IX

THE PROCESS OF DETERMINING THE BOUNDARY IN THE PRESENT CASE

CHAPTER I. INTRODUCTION

9.01 The task of attribution of territory in an area of territory subject to the competing claims of two States, which is an accepted judicial task[1], presupposes that, as a part of that judicial task, a line can be drawn. It will be that line which separates the territory of one claimant from the territory of the other, based on the Court's assessment of the limits within which one State or the other has proved the better title.

9.02 Certainly in many cases the task of identifying an actual line of delimitation does not arise, for the nature of the disputed territory is such that the boundary is a natural boundary, a boundary which is self-evident once attribution has been decided. This is most clearly the case with a disputed island. Once sovereignty over the island is decided, the boundaries are, as it were, dictated by nature[2]. But conceivably other natural features could facilitate a Court's task. A river, or a mountain divide, might, for example, produce an obvious boundary once the issue of title is decided[3].

9.03 The present case is undeniably more difficult. The area of the borderlands that is subject to dispute in the present case contains no obvious line of delimitation, dictated by the physical features of the terrain once title is decided. Nevertheless, in a situation such as the present where no conventional boundary exists, the Court's judicial responsibility remains. Clearly it must establish a delimitation de novo. But this does not thereby become an arbitrary exercise, and certainly not a decision ex aequo et bono. For the Court has at its disposal certain fundamental rules of law which can, and must, be applied taking account of the whole history of events, the documentary record, the proven facts of the case, and the evidence of the conduct of the interested parties including both their treaty-practice and their proposals for treaties whether or not a treaty in force finally emerged from those proposals.

---

[1] See, Part II, Chapter II, above.

[2] See, Chapter II, below, for a discussion of such particular cases as the Island of Palmas Case, the Clipperton Island Case, and the Minquiers and Ecrehos Case.

[3] See, for example, the Case Concerning the Boundary between British Guiyana and Brazil, decided by the King of Italy, 6 June 1904: R.G.D.I.P., 1904, Doc. 18-20; Repertory of International Arbitral Jurisprudence, Dordrecht, Ed. Coussirat-Coustère and Eisemann, Vol. 1, 1989, pp. 84-86. Having found that "not even the limit of the zone of territory over which the right of sovereignty of one or other of the two Parties may be held to be established can be fixed with precision", the Arbitrator nonetheless established a line "in accordance with the lines traced by nature".

9.04 In short, the Court is not faced with a tabula rasa. Complex as the task may be, there remains a concrete task of applying law and fact so as to determine the limits within which each Party has shown, and can legitimately claim, the better title[4]; and the respective limits of the territory of each Party can be depicted by a line. The only specific limitations on the Court, peculiar to this case, are perhaps three:

- Both Parties agree the critical date is 1951, the date of Libyan independence;

- Chad claims as successor to France; its title is entirely derivative; and it can have no better claim than France itself could have had;

- In the 1955 Treaty, France sought to rely exclusively on a supposed conventional line, and disclaimed any title acquired on the basis of colonial effectivités[5].

This last point is, in Libya's submission, of the greatest significance. It demonstrates that France was fully aware of the weakness of any claim based on effectivités. France must have known that, even by reference to the classical, 19th Century requirements of effectiveness, the very limited evidence of the French military presence in the borderlands prior to 1919 (and it was an exclusively military presence) would be wholly inadequate. There is a fundamental failure of proof in the CM to establish French title to any part of the borderlands prior to 1919, let alone thereafter, the onus being on Chad to show that France's northward expansion into the borderlands starting in 1913 had generated a legal title to this region (and an international boundary) by 1919. Moreover, France would have been aware in any event, given the legal obligations France had accepted under the Covenant of the League and the Pact of Paris, that French military activities in the borderlands after 1919 against continued armed resistance persisting into the 1930s were wholly illegal and could not generate a legal title.

---

[4] As regards this concept, see, para. 9.13, below, and fn. 23.

[5] See, analysis of the 1955 Treaty in Part III, above, and the specific discussion of this point in Part V, starting at para. 5.03. That France sought, quite deliberately, to exclude reliance on effectivités is clear from the advice given to the French Foreign Minister by the Governor-General of the A.E.F. The negotiations were to be conducted "en prenant pour seules bases les traités en vigueur à la date de la création de l'Etat Libyen"; Letter of 2 May 1955, LM, French Archives Annex, p. 169. See, para. 8.70, above.

CHAPTER II. THE CRITERIA TO BE APPLIED

SECTION 1. Priority of Title (Prior in Tempore, Potior in Jure)

9.05 The notion that the law protects, and favours, a prior title is a principle basic to all legal systems. It is grounded in those same considerations that argue for stability as a primary objective of any legal system.

9.06 Thus, in the Case concerning Sovereignty over the Alp of Cravairola[6], the Italian claim was preferred, firstly, because Italy had established a title based on the acquisition of the territory by communes as early as 1367, so that, in the absence of proof by Switzerland that such title had been displaced, that title prevailed. So also, in the Island of Bulama case[7], the Portuguese claim, based partly on discovery and partly on occupation and settlement dating from the beginning of the 18th Century, was preferred to the British claim deriving from alleged cessions by native chiefs dating only from the end of the 18th Century. The decision in the Clipperton Island case was based on the same principle[8].

9.07 In the present case, if that same principle is applied by comparing the two titles, the conclusion is inescapable: the prior title in the borderlands attaches to Libya.

---

[6] Italy/Switzerland, Arbitral Award of 23 September 1874: as translated by Moore, Int. Arb. Vol. II, 2028-2047; Repertory of International Arbitral Jurisprudence, Dordrecht, Ed. Coussirat-Coustère and Eisemann, Vol. 1, 1989, pp. 66-74. Somewhat similar reasoning can be seen at work in the Grisbadarna Case, Norway/Sweden, Award of 23 October 1909, P.C.A., Scott, J.B.: The Hague Court Reports, New York City, Oxford University Press, 1932, p. 121, for the Court formulated the dictum that "in the law of nations, it is a well-established principle that it is necessary to refrain as far as possible from modifying the state of things existing in fact and for a long time" (at p. 130).

[7] Portugal/Great Britain, Award of 21 April 1870, by President Ulysses S. Grant, Repertory of International Arbitral Jurisprudence, Vol. I, pp. 77-78.

[8] Clipperton Island Case, op. cit., p. 1105.

(a) The Title of Libya

9.08 As demonstrated in Libya's Memorial, there can be little doubt that a valid title vested in the Senoussi before the Anglo-French Declaration of 1899, and even before the French reached Lake Chad[9]. Indeed, this is not contested by Chad. As Chad says in its own Memorial:

> "Il est aisé de constater que ni la France, ni la Grande-Bretagne, après la Déclaration de 1899, ni la France ni l'Italie, après l'Accord de 1902, n'acquérirent de droits souverains sur le B.E.T. en vertu de ces accords. En effet, à l'époque, et jusqu'en 1912, c'était la Senoussia qui exerçait de tels droits sur la région[10]."

Thus, on Chad's own thesis, there was a prior Senoussi title; so this question becomes one of deciding the limits - that is to say the geographical limits - within which this title was displaced by a new French title. And this in turn requires clear evidence that the French title was effectively, and validly, acquired.

9.09 The factual evidence has been surveyed in detail in Part V above. At this juncture it will suffice to recall that French penetration into the borderlands north of 15°N latitude began only in 1913-14; that it was an entirely military penetration concentrated on four oases[11]; and that, prior to 1913, 15°N latitude broadly had marked the limit of French penetration. Indeed, the French negotiations with the Senoussi in 1911 seemed to have adopted the same limit, marking Arada as the limit of the French aims[12].

9.10 Only with the withdrawal of the Ottoman garrisons from the borderlands, completed in March 1913, did France begin to penetrate north of 15°N latitude, succeeding only gradually against the indigenous Senoussi tribes, weakened by the Ottoman withdrawal. But this "success" was represented by a minuscule military presence; and in Tibesti the posts at Zouar and Bardaï, only occupied in 1914, were quickly abandoned in the face of Senoussi resistance, in August 1916[13].

---

[9] See, especially, LM, paras. 3.44-3.71 and 4.78-4.112; see, also, Part V, above.

[10] CM, p. 254, para. 177; see, also, CM, p. 19, para. 12.

[11] Confirmed, CM, p. 251, para. 161. But note that two of these four oases (Djado and Aïr) lie well to the east of the borderlands: see, para. 5.19, above, and Map LC-M 38.

[12] See, LM, paras. 4.156-4.157.

[13] See, para. 5.25, et seq., and 5.47, et seq., above.

9.11 It must also be recalled that, at least until 1913, the Ottoman Empire maintained on the international plane claims to sovereignty that co-existed with the indigenous Senoussi claims of title to territory[14]. This "co-existence" of sovereignty and title flowed from the fact that the local rulers accepted the Ottoman sovereignty: they accepted that they were vassals of the Sublime Porte[15]. This was certainly true of the Senoussi, who allied with the Ottomans and fought under their flag. The report of Muhammed Basala in 1894[16] revealed the significance attached to the Imperial firman by the local rulers; and in the borderlands there is clear evidence that Ottoman protection was sought and allegiance to the Ottoman Empire was accepted[17]. Of course, the Ottoman hinterland claims extended far south of the borderlands[18]. But the fact that, at least so far as the borderlands were concerned, these were not mere "paper" claims is evidenced by the presence of Ottoman civil and military authorities in the borderlands between 1908 and 1913, acting in co-operation with the Senoussi[19]. It was this Ottoman presence, which encountered no resistance from, and was indeed welcomed by, the Senoussi and the local tribes, that brought about the modus vivendi with France between 1910 and 1913, based on 15°N as a de facto delimitation[20].

9.12 Thus, at least in the borderlands, Libya has a good and valid title (and indeed a prior title), based not only on the title of the Senoussi peoples, but on the assertions of sovereignty on the international plane by the Ottoman

---

[14] See, LM, paras. 5.49-5.55 and paras. 5.74-5.82; and, for the Franco-Ottoman negotiations on a boundary between 1910-1911, see, LM, paras. 5.111-5.116. See, also, LM, paras. 5.134-5.149, for a detailed account of the legal effect of the 1912 Treaty of Ouchy.

[15] See, LM, paras. 4.70-4.72 and 4.80-4.81.

[16] LM, paras. 4.123-4.125.

[17] LM, paras. 4.127-4.134.

[18] For a map showing the Ottoman Claim, see, Map LC-M 1, referred to at para. 1.07, above.

[19] See, LM, paras. 4.127-4.134, and Map No. 53, referrred to in LM, para. 5.116; see, also Map LC-M 28 referred to at para. 4.139, above, and Map LC-M 41 referred to at para. 5.24, above.

[20] LM, paras. 4.140-4.146. See, also, paras. 5.30-5.32, above, and in particular the passage from p. 179, para. 135 of the CM cited at para. 5.30 confirming the cooperation between the Ottoman military and civil authorities, on the one hand, and the Senoussi, on the other hand, during this period.

Empire, coupled with the effective exercise of that sovereignty by Ottoman civil and military authorities during the period from 1908 to 1913.

9.13 Nor was this title waived or prejudiced by Italy after 1912. Italy's protests against the Anglo-French 1919 Convention[21], and the various Italian proposals to France for delimitation during the period 1920-1934[22], testify to the continuing validity of the Ottoman/Senoussi claims. Libya thus inherited a complex, but clear and continuous title to the territory. The consequence is that the onus lies on Chad to prove a better title inherited from France and, since the indigenous Senoussi title and the Ottoman title clearly pre-date any possible title claimed by France, the presumption of validity must favour the earlier titles[23]. Inevitably, therefore, one must turn to the evidence advanced by Chad to support this "replacement" of the original title by a newer, French title.

(b) The Title of Chad

9.14 The claim of title by Chad is entirely derivative. It is a claim by way of succession to France, and Chad does not pretend that the claim rests upon conduct by Chad itself, post-independence. Indeed, the matter could not be otherwise, for Chad agrees with Libya that the operative, critical date is 1951, prior to Chad's own independence.

9.15 It follows, therefore, that in making a derivative claim Chad cannot claim a better title than France itself possessed. Nor can Chad support that claim by arguments that would have been denied to France, for Chad cannot both put forward what is in essence a French claim and, at the same time, utilize arguments incompatible with the French claim. Thus, insofar as the French claim rested on the 1955 Treaty - which is also Chad's claim under Chad's first theory[24] - it was France's contention that any boundary derived exclusively from the treaties enumerated in Annex I to the Treaty. That contention involved a clear rejection of any claim based on France's colonial effectivités. Accordingly, Chad cannot now advance a purely derivative claim based on arguments totally inconsistent with that French position; and it follows that Chad's second theory[25] - which is based on French effectivités in the sense that these acts of possession and control are argued to have "converted" the so-called 1899-1919 line into a true boundary line - is inadmissible; as indeed is Chad's third theory, which relies on French effectivités as an autonomous basis for claiming the 1899-1919 line. These contentions as to the inadmissibility of Chad's second and third theories in the light of the basic French position that any boundary derived exclusively from the treaties listed in Annex I to the 1955 Treaty are of course without prejudice to other Libyan arguments already developed in this Counter-Memorial that Chad's second and third theories are simply not sustainable on the facts.

---

[21] See, para. 4.204, et seq., above.

[22] See, LM, paras. 5.247-5.257, and illustrative maps.

[23] The present case is clearly one which depends upon the relative strength of the titles (the "better" title). For discussion of this well-established concept see Island of Palmas Case, op. cit., p. 839 ('superior' title); Rann of Kutch Case, op. cit., p. 518 (per Lagergren). And, see, the Judgment of the P.C.I.J. in the Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J. Series A/B No. 53, p. 46: "In most of the cases involving claims to territorial sovereignty which have come before an international tribunal, there have been two competing claims to the sovereignty, and the tribunal has had to decide which of the two is the stronger." See, also, the Judgment of the present Court in the Minquiers and Ecrehos Case, op. cit., p. 67: "The Court, being now called upon to appraise the relative strength of the opposing claims to sovereignty over the Ecrehos in the light of the facts considered above, finds ... that the sovereignty over the Ecrehos belongs to the United Kingdom." See, generally, Munkman, op. cit., p. 70.

9.16 Yet this inconsistency is not the only difficulty faced by Chad. For there is the additional difficulty that Chad recognizes that a prior title to the territory of the borderlands vested in the Senoussi (and thus that the territory was not terra nullius); and yet Chad argues as if France was entitled to occupy the territory, as if the territory were in fact terra nullius. It is understandable that Chad would not wish to portray the French penetration into the borderlands for what it was - military invasion prohibited by international law. And, clearly, Chad's reliance on the theory of "consolidation of title"[26] is essentially designed to avoid this difficulty. It is evidently Chad's hope that, by invoking the theory of "consolidation" based on a supposed acquiescence in the French conduct, the fundamental defects of that conduct can be overlooked. In fact that cannot be done. As we turn to consider the further criteria to be applied by the Court, it will become obvious that France never established effective possession in the borderlands; that such military penetration as did occur was not only not "peaceful" possession, but actually illegal, armed invasion; and that the international community did not, and legally could not, acquiesce in any claim of title derived from such conduct.

---

[24] See, Part III, above.

[25] See, Part IV, above.

[26] See, Part VIII, above; see, also, para. 9.30, et seq., below.

SECTION 2. The Criterion of "Effective" Possession

9.17 Whatever may have been the law in previous centuries, there can be little doubt that at the beginning of this century, when France moved northwards into the borderlands, absent a treaty of cession the law required effective occupation in the sense of a "continuous and peaceful display of State authority[27]". It is certainly true that "effectiveness" is a relative concept, so that the degree of State authority and activity required will vary with the nature of the territory[28]: less will be required of a State in an uninhabited territory than in a populated territory. That being so, it is nevertheless true that, even in relation to uninhabited or sparsely-inhabited territories, such as the Courts have dealt with in the Eastern Greenland Case[29], or the Minquiers and Ecrehos Case[30], the law has required some evidence of civil administration of the territory.

9.18 Practice and doctrine have long recognized that military control of territory alone will not be considered as "effective" occupation. In his classic treatise, "The Law of Nations", published first in 1758, Emeric de Vattel, though not directly addressing the issue, pointed out at page 208 that recognition of sovereignty required that the State had "really taken actual possession, in which it had formed settlements, or of which it makes actual use ..."[31]. The rationale of the rule is stated by de Vattel to be that the Law of Nations permits appropriation of land only to the extent that nations "have occasion for" it, and will not recognize "more than they are able to settle and cultivate"[32].

9.19 In the 19th Century, the same position was often expressed in terms of the requirement of the sovereign Power to afford security to life and property[33]. It is clear that the establishment of a few military installations spread over a large territory will not satisfy this requirement. The most thorough review of relevant State practice in the 19th Century and before is found in M. Lindley, The Acquisition and Government of Backward Territory in International Law (1926)[34]. This study directly addresses the relationship between effective occupation and the maintenance of military establishments and concludes that the concept of effective occupation, as defined by rules of international law, must be considered independently of strictly military concerns. As Lindley writes:

---

[27] Island of Palmas Case, op. cit., p. 870.

[28] See, Lindley, M.: The Acquisition and Government of Backward Territory in International Law, London, Longmans, 1926, p. 159; and, see, generally, Ago, R.: Il requisito dell'effetività occupazione in diritto internazionale, Rome, Anonima Romana, 1934.

[29] Judgment, 1933, P.C.I.J., Series A/B, No. 53.

[30] I.C.J. Reports 1953, p. 47.

[31] De Vattel, E., as translated by Chitty: The Law of Nations, London, Stevens, 1934.

[32] In subsequent periods, such prominent writers as Phillimore, R.: Commentaries upon International Law, London, Butterworths, 3rd ed., 1879-1889 (4 Vols.), p. 120, Pinheiro-Ferreira, S.: Notes on G.F. des Martens, 1831, p. 37, and Twiss, T.: The Oregon Question Examined, London, Longman, Brown, Green and Longmans, 1846, pp. 169 and 295, reiterated the same view.

> "It is, however, becoming generally recognized, from the abstract point of view, that the physical power of exclusion is not an essential element in possession, and, so far as territorial sovereignty is concerned, the mere building of forts ... is not by itself either a sufficient compliance with the condition of effective occupation, nor, in general, a necessary part of it[35]."

9.20 It must be borne in mind that the borderlands were populated by indigenous tribes and are not at all comparable to uninhabited islands, for example. Although it has been recognized that the standards for effective occupation will vary for inhabited and uninhabited territories, the presence of scattered military posts would not fulfil the requirement of effective occupation in an area such as the borderlands.

9.21 Libya knows of no case where a purely military authority, divorced from any civil administration, has been held to be a sufficient display of State activity. And such a requirement of a display of governmental - as opposed to military - authority would conform to the law of recognition. For States will accord recognition as sovereign over territory to those authorities that display the capacity to fulfil the obligations of a State in respect of such territory. It is the nature of those obligations which dictates that they cannot be fulfilled by military power alone. The Parties are in complete agreement on this point. Chad devotes Part III of Chapter 2 of its Memorial to sustaining the proposition that "L'occupation militaire ne confère pas de titre".

9.22 Moreover, in relation to the borderlands the question need not be dealt with in abstract terms, for it is clear that there was an administration of the territory in existence prior to the French invasion. As has been demonstrated[36], the Senoussi provided education, religious and secular, water-supplies and facilities for caravans, and settled disputes, imposed taxes and organized defence. It can thus be assumed that this pre-existing, rudimentary administration of the territory represented a minimum standard of effective control to which a powerful European State, like France, had to conform if it sought to substitute its own administration. In addition, as pointed out in Part V above, the Ottoman occupation of the borderlands was not purely military in nature, a point that Chad concedes[37]; and the local authority installed by the Ottomans was the Kaimakam, a civilian authority.

---

[33] See, Annuaire de l'Institut de Droit International, 1888, p. 201, et seq.

[34] Lindley, op. cit.

[35] Ibid., p. 140. (A copy of this page is attached as Exhibit LC-M 48.)

9.23 In fact, however, the evidence discloses that France never even attempted to match or duplicate this rather minimal level of administration. In the crucial period 1913-1919, when Chad argues that French "consolidation" of its title was achieved by occupation (effectivités), the picture which emerges is the following[38]:

Borkou	One company (the 7th), centred on Faya, with posts at Aïn Galakka and Gouro.
Ennedi Ounianga	One company (the 8th), centred on Fada, with a post at Ounianga Kebir.
Tibesti	Bardaï abandoned by the French in 1916, after two years of temporary occupation, and not re-occupied until November 1929.

SECTION 3. The Criterion of "Peaceful" Possession

9.24 The emphasis on peaceful possession, which is to be found in Judge Huber's award in the Island of Palmas Case[39], is accepted as a correct statement of the law. It is the peaceful character of occupation which distinguishes it from conquest: the first remains a valid mode of acquiring title, the second does not. In the requirement that possession be "peaceful" one sees a reflection of the requirement of effectiveness (for an opposed occupation will rarely be effective), and perhaps also an embryonic link with the right of self-determination. Thus a valid title presupposed an acceptance of the presence of the occupier by the indigenous people.

---

[36] LM, paras. 3.44-3.50.

[37] See, para. 5.30, et seq., above, and CM, p. 179, para. 135.

[38] See, Part V, above. The source of this information is the Histoire Militaire de l'Afrique Equatoriale Française, op. cit., pp. 458-459. (Exhibit LC-M 13.)

[39] Island of Palmas Case, op. cit., p. 857: "the continuous and peaceful display of actual power in the contested region".

9.25 In the case of the borderlands there is clear evidence of continued, armed resistance to the French invasion by the indigenous peoples starting in 1913 and continuing into the 1920s, and even into the 1930s, particularly in Tibesti[40]. Certainly, the degree of resistance offered decreased, for the Senoussi had to divert their efforts towards meeting the Italian threat in the north. But the very fact that the French penetration into the borderlands was a military penetration emphasizes the fact that it was not peaceful.

9.26 Indeed, the facts of the present case suggest an interesting paradox. In the late 1920s and early 1930s, Italy was engaged in constant armed conflict with the Senoussi peoples within Tripolitania and Cyrenaica following the denunciation by Italy, on 1 May 1923, of the al-Rajma Treaty of 25 October 1920, whereby Italy had acknowledged a very large measure of autonomy to Emir Idris (Head of the Senoussi Order) in Cyrenaica[41]. This was in pursuance of the Italian policy of seeking to assert colonial control over the southern reaches of Tripolitania and Cyrenaica, the Italian colonial administration and authority having hitherto been confined to the coastal strips of these two provinces. Simultaneously, and partly as a consequence of, or in anticipation of, Italian moves into Fezzan, the French decided to occupy Tibesti, encountering determined resistance from the Senoussi peoples in doing so.

9.27 The paradox is that both colonial Powers (Italy and France) were simultaneously, but for widely differing reasons, intent upon crushing Senoussi armed resistance to colonial rule. The significant difference between the two situations is of course that Italy was seeking to assert its authority in territory (Tripolitania and Cyrenaica) over which it had undoubted sovereignty by virtue of inheritance from the Ottoman Empire and as a result of the Treaty of

---

[40] See, Part V, above, and Maps LC-M 43, 47 and 48 referred to at paras. 5.38, 5.52 and 5.60, above.

[41] See, LM, paras. 4.176-4.182 and paras. 5.240-5.246.

Ouchy, the Treaty of London and the 1923 Treaty of Lausanne; whereas France was seeking to assert its authority in the borderlands, an area in which (as Chad itself admits) the Senoussi exercised undoubted authority and control prior to the French northward movement in the 1920s and an area to which (as France well knew) both the Ottoman Empire and Italy (as its successor) asserted title. But what the facts above all demonstrate is that the French "occupation" of Tibesti in 1929-1930 was far from peaceful in the sense that it encountered continuing resistance from the Senoussi and local tribesmen, and that large parts of the borderlands (particularly in Borkou and Ennedi) still lay outside French authority and control at this time[42]. The criterion of "peaceful" possession of the borderlands by France was thus not met even in 1929-1930, far less in 1919. Nor was the French "occupation" continuous. This is particularly evident in Tibesti, for France withdrew from there between 1916 and 1929.

SECTION 4. The Criterion of Legality Supplied by the Inter-Temporal Law

9.28 The Chadian claim to the "effectiveness" of the French occupation of the borderlands cannot be detached from the question of the legality of those acts of occupation. Certainly for a court the maxim ex injuria jus non oritur[43] must operate as a criterion by which the legal effects of conduct must be judged, the more especially where the rule of law breached by the conduct is a rule of jus cogens.

9.29 In its Memorial[44], Libya has demonstrated that, from 1920, France was under a binding legal obligation not to acquire territory by resorting to war[45]. It must therefore follow that military conquest, contrary to the League Covenant and the Pact of Paris, could not thereafter generate a valid title to territory. And, on all the evidence, it cannot be said that France had effectively occupied any territory north of approximately 15° latitude prior to 1920.

---

[42] See, paras. 5.69-5.95 above (especially, paras. 5.75-5.92).

[43] See, Jennings, R.: "Nullity and Effectiveness in International Law", Essays in Honour of Lord McNair, London, Sterns, 1965, pp. 72-74.

[44] LM, para. 6.44, et seq.

[45] The notion that any such legal obligations afforded no protection to entities nor Member States of the League, or non-parties to the 1928 Pact, is unacceptable and irrelevant: for if Italy had succeeded to the claims and titles of the Ottoman Empire, Italy was fully protected by those obligations.

SECTION 5. The Relevance of Recognition or Acquiescence in the French Claims of Title

9.30 The law imposes certain limits on the relevance of evidence of any claimed "recognition" or "acquiescence". Certainly such evidence has little relevance to any claim based on effectivités, in the sense that what conduct can be proved, to the satisfaction of the Court, is a question essentially of fact. Thus, what matters for the Court is the evidence of the facts, and if such evidence really does not exist, its lack cannot be compensated by the so-called "recognition" by either Italy pre-1939, or by States in the United Nations post-war. And, in any event, this Counter-Memorial has shown that there was, in fact, no such "recognition" or "acquiescence"[46]. It has been suggested earlier that one reason for Chad's preference for "consolidation", as the basis of French title, lies in the lack of real, factual evidence of effective, continuous occupation, and that Chad seeks to avoid this defect by relying on a supposed recognition or acquiescence so as to overcome the absence of real evidence as to the facts, or to disguise the fact that such factual evidence as exists negatives any claim that France had achieved effective, continuous occupation of the borderlands prior to 1929-1930, far less by 1919[47]. In this context, it is worth bearing in mind the cautionary observation that "the process of consolidation cannot begin unless and until actual possession is already an accomplished fact"[48].

9.31 Finally, it must be noted that once the French invasion of the borderlands is characterized as illegal by reference to a norm of a jus cogens character, that conduct becomes a nullity. The illegality of the conduct cannot be "cured" by acts of recognition or acquiescence on the part of other States[49].

---

[46] See, Part VIII, above.

[47] See, para. 9.16, above.

[48] Jennings, R.: The Acquisition of Territory in International Law, Manchester, Manchester University Press, 1963, p. 26.

[49] Jennings, op. cit., fn. 43, above: "But if the injuria is only a breach of a jus cogens ... there should in principle be no question of qualifying the resulting nullity by waivers or estoppels resulting from the conduct of a particular legal person."

SECTION 6. The Conduct of the Parties Directly Affected, as Reflected in Their Proposals for Settlement

9.32 In principle, the conduct of interested parties in presenting their claims ought to afford some guidance - a "criterion" is perhaps too strong a word - for the Court.

9.33 It is certainly of some interest to see how the Italian Government viewed the claims to which Italy was entitled, as successor to the Ottoman Empire, in relation to the advance northwards of the French. A memorandum of 5 February 1925, drawn up in the Italian Foreign Ministry, made these points[50]:

- The French occupation was eroding the territorial rights of Italy, based not simply on the succession to the Ottoman Empire's hinterland claim, but based on the Ottoman exercise of effective sovereign rights in Borkou, Tibesti, Ounianga and Erdi;

- This adverse French occupation was very superficial;

- It was designed to transform the 1899 line, a mere limit to further French expansion towards the Nile, into a true, territorial boundary.

9.34 Thus, in assessing the significance of the various proposals and counter-proposals made by Italy and France in the period 1920-1934, it needs to be borne in mind that Italy was not seeking a cession from France, but rather to minimize any loss to Italy of territories it believed it had inherited from the Ottoman Empire. The existence of Article 13 of the 1915 Treaty of London did not change that view. The fact that Italy was entitled to "equitable compensation" in Africa did not automatically convert any settlement of boundaries with France into a cession by France. Therefore, the Italian 1919 claim[51], made during the

---

[50] C.M. Annex 109.

[51] See, L.M.para. 5.166.

Peace Congress, claimed the whole of Borkou, Ennedi and Tibesti *as of right* under Article 10 of the Treaty of London[52].

9.35 The Italian "maximum", "medium" and "minimum" programs - drawn up in 1928 for the Franco-Italian negotiations[53] - disclose the Italian perception of a *minimum* entitlement to most of the borderlands. Certainly the more modest "fourth" program[54] claimed only part of Tibesti, and left Borkou to France, but it was clearly in the nature of a compromise and no proof at all that Italy sought a cession from France. And the 1935 line, agreed by the two Powers but never implemented, was regarded as a cession *by Italy* in return for French support for Italian ambitions against Ethiopia[55].

9.36 It may be suggested that evidence of France's views of the extent of French title has equal weight to evidence of those of Italy; and these views contradict those of Italy. However, it has to be recalled that France was embarked upon a campaign of military conquest, moving northwards in an attempt to convert the 1899 line limiting French territorial expansion into a true boundary. For this reason, France's claims have to be assessed in that context. Whereas Italy believed itself to be *defending* its territorial rights, France was avowedly *extending* its territorial claims[56].

9.37 Faced with two such opposing views, it may be difficult for the Court to utilize the conduct of either Party - Italy or France - as a criterion supporting the choice of a precise line. But, in Libya's submission this conduct does suggest that the area of Libya's claim, as shown on Map No. 105 in the Libyan Memorial[57], and depicted again at the end of this Part (*Map LC-M* 55), is a realistic appraisal of the area within which a boundary had to be located - as seen by the Parties in the decade 1920-1930. The more precise location of a line, within that area of claim, should, in Libya's submission, turn on other criteria, in particular the evidence of the absence of French effective occupation pre-1920, and subject to the Court's power to invoke other equitable factors. These constitute a final category of criteria, and it is to these that we now turn.

---

[52] *See*, *LM*, para. 5.152, *et seq.*

[53] See, *LM*, para. 5.251, *et seq.*, and Maps Nos. 68, 70 and 71 referred to there.

[54] *See*, *LM*, para. 5.255, and Map No. 72.

[55] *See*, para. 6.03, *et seq.*, above.

[56] *See*, para. 9.27, above.

[57] Referred to at *LM*, para. 6.84.

SECTION 7. **Other "Equitable" Criteria**

9.38 Chad is understandably anxious to exclude all equitable considerations[58]. It is however Libya's submission that, in determining a boundary de novo, the Court has the power (arguably the duty) to produce a line that is practical, fair and sensible, taking account of the legitimate interests of the Parties and of the peoples of the region. Whether these criteria are termed "equitable" or not, is a matter of terminology. There is ample evidence that such criteria are legally relevant criteria: if "equity", it is equity infra legem.

9.39 Thus, in the words of Professor Bardonnet (referring to territorial boundaries):

> "L'équité peut contribuer enfin au tracé de la ligne frontière dans des régions dont le statut est si indéterminé qu'elles ne connaissent pas de limites historiques[59]."

Citing the award in the Rann of Kutch Case[60], Bardonnet emphasizes that this is equity within the law, and not a reference to considerations ex aequo et bono.

9.40 Certainly in the political settlement of frontiers a host of considerations are relevant: the history of the area, the affiliations of the people, the strategic interests of neighbouring States, etc.[61]. And there is merit in the suggestion that it is fallacious to distinguish too sharply between political and judicial settlements in this sphere[62]. For the ultimate aim is to achieve a stable frontier - whether via the political or the judicial process - and the justification for this broad view of the factors which need to be taken into account in determining a frontier de novo is precisely that a broad view of all the "equities", the relevant factors, will contribute to a wise decision with a good chance of promoting stability.

---

[58] CM, pp. 57-60, paras. 42-51.

[59] Bardonnet, D.: "Equité et frontières terrestres", Mélanges offerts à Paul Reuter, Paris, Pedone, 1981, pp. 35-74, p. 66. (A copy of this page is attached as Exhibit LC-M 49.) For a similar view see, Munkman, op. cit., pp. 1-116, at pp. 112-114.

[60] Rann of Kutch, op. cit., cited by Bardonnet, op. cit., p. 69.

[61] A prime example is the determination of the boundary between Turkey and Armenia by President Wilson under Article 89 of the Treaty of Sèvres, 1920. For various other illustrations, see, Bardonnet, op. cit., p. 45. The post-1919 negotiations between the Allied Powers pursuant to Article 13 of the Treaty of London (LM, para. 5.154, et seq.) afford a further example; so, too, the post-1947 discussions in the U.N. regarding the disposition of the Italian Colonies (LM, para. 5.362, et seq.).

[62] See, Munkman, op. cit., p. 113.

9.41 Indeed, in executing the task of demarcating an agreed, conventional boundary, it is accepted wisdom that a boundary commission has an inherent power to make such adjustments as will produce a coherent, sensible boundary[63]. And these adjustments will be to take account of precisely those factors - communications, locations of wells, pastures, maintenance of unity amongst tribes or peoples, etc. - which may be termed "equitable".

9.42 It would be extraordinary if such factors were to be regarded as relevant in adopting minor variations in a boundary line, but irrelevant in adopting the line itself. Logically, the position ought to be the opposite. As Munkman says:

> "... it is evident that discretion of the tribunal will be progressively limited as the boundary is more closely defined. In the allocation of territory the tribunal will be most free to take account of the widest considerations of policy[64]."

Such a view is confirmed by the Court's own handling of the Eastern Greenland Case[65].

9.43 This view is supported by the jurisprudence. In the Award of 9 July 1909 in the Bolivia/Peru dispute[66], the arbitrator was given power in Article 4 of the compromis, in situations in which the location of the line on the basis of uti possidetis was unclear, to resolve the question equitably ("esquitativemente"). In the award by Chief Justice Hughes in the Guatemala/Honduras dispute, rendered on 23 January 1933[67], uti possidetis again offered little precise guidance on a line, for large areas were unexplored and administrative authority non-existent. Chief Justice Hughes concluded:

---

[63] See, the many illustrations given by Bardonnet, op. cit., pp. 49-55.

[64] Munkman, op. cit., p. 116. (A copy of this page is attached as Exhibit LC-M 50.)

[65] Eastern Greenland Case, op. cit.

[66] XI R.I.A.A., p. 141. The decision is discussed by Bardonnet, op. cit., at pp. 57-58.

[67] II R.I.A.A., pp. 1307-1366.

> "[T]he Treaty [the compromis] must be construed as empowering the Tribunal to determine the definitive boundary as justice may require throughout the entire area in controversy ...[68]."

9.44 In the Rann of Kutch Case, the Chairman made reference to a portion of the line where two deep inlets occurred on either side of a feature called Nagar Parkar, and concluded:

> "... it would be inequitable to recognize these inlets as foreign territory. It would be conducive to friction and conflict. The paramount consideration of promoting peace and stability in this region compels the recognition and confirmation that this territory, which is wholly surrounded by Pakistan territory, also be regarded as such[69]."

9.45 If, then, the judicial task of attribution of territory requires that, in determining a precise line, "equitable" factors may be taken into account, it remains only to identify those factors. However, there is no reason why the categories of such factors should be regarded as closed, or absolute, in land boundary cases, any more than they are in maritime boundary cases: each case is a unicum, and the relevance of factors will vary from case to case.

9.46 However, the practice of tribunals suggests that the following criteria are legitimate, and relevant; and they clearly have a role to play in the present case[70].

(a) The Ties To the North of the Inhabitants of the Borderlands

9.47 This must be a relevant consideration, if only because any contemporaneous attribution of territory must take account of the wishes of the peoples. Were it not so, the norm of self-determination of peoples would have very little content. As shown in Part III, Chapter II of Libya's Memorial, the predominant tribal groups in the borderlands have ties to their Muslim brethen in the north. In fact, members of these tribes are to be found throughout Libya and the borderlands. In addition, substantial numbers of Libyan merchants came into the borderlands when the Senoussi assumed control of the area and protected and promoted commerce, and they have remained.

---

[68] Ibid., p. 1352. (A copy of this page is attached as Exhibit LC-M 51.)

[69] Rann of Kutch, op. cit., p. 520. (A copy of this page is attached as Exhibit LC-M 52.)

[70] Munkman, op. cit., pp. 95-116, lists the criteria shown to be relevant in the jurisprudence as follows: (a) recognition, acquiescence and preclusion; (b) possession and administration; (c) affiliation of the inhabitants of the disputed territory; (d) geographical considerations; (e) economic considerations; (f) historical considerations; (g) others. The first two categories are covered extensively in Parts V and VIII, above, and need not be repeated here. To Munkman's list it is clearly necessary, on the basis of the jurisprudence reviewed above, to add considerations of peace and security in the area.

9.48 The natural affiliation of these people to the north meant that those who fled from the borderlands during the civil war in Chad, in 1968 and thereafter, fled to Fezzan, Tripolitania and Cyrenaica.

9.49 The peoples of the borderlands are linked to the peoples to the north ethnically and by common bonds of religion, language and culture, as well, for they are desert, semi-nomadic peoples with a natural affinity to the great deserts in the north, rather than to the settled, pastoral life of the tribes that inhabit the area south of 15°N latitude. If evidence were needed of the substantial difference between the peoples of the borderlands and those to the south in Chad, the bitter civil war in Chad provides that evidence.

(b) Geographical Considerations

9.50 Considerations of the geography of the region tie in with the ethnic differences noted above. At around 15°N latitude the climate and terrain change. The difference between desert and savannah, with vegetation being dependent on rainfall, has resulted in a difference between populations. It has affected their lifestyle and their natural affiliations. Moreover, the mountainous regions of the Tibesti massif have tended to isolate the peoples of that region from the peoples of the plains to the south[71].

(c) Economic Considerations

9.51 The economic links between the peoples of the borderlands and Libya to the north are a result of essentially two factors: the first is that they share a semi-nomadic lifestyle; the second is that such trade as developed along the trade-routes was essentially trade with the north[72].

---

[71] See, generally, LM, Part III, and in particular, paras. 3.10, 3.29-3.33, together with Maps Nos. 8, 15, 16, 17 and 18.

9.52 Looking to the future, there seems little doubt that the prosperity of the peoples of the borderlands will depend upon a fostering of the links with Libya.

(d) Historical Considerations

9.53 The long historical description of the evolution of this dispute - which need not be repeated here - demonstrates that, historically, the borderlands were held by the Senoussi, who owed allegiance to the Ottoman Empire. France itself saw the borderlands as a separate territory, different from Chad to the south, "le front nord", and always separately administered. The attempt to unite the borderlands with Chad was both artificial and doomed to failure, as the civil war in Chad has shown at great cost.

(e) Considerations of Stability, Peace and Security

9.54 So far as the inhabitants of the borderlands are concerned, as previous factors have indicated, their historical, ethnic, religious and economic ties are with the north. To attempt to fuse these peoples with the people in Chad proper is to invite continuing unrest and permanent instability.

9.55 Certainly so long as France remained as a Colonial Power in Africa, France saw its hold on these borderlands as important to the security of the French African Empire. For France deemed its communications between French West Africa, Chad, and French North Africa to be vital[73]. But that situation no longer remains, and Chad has no comparable security interest in the borderlands.

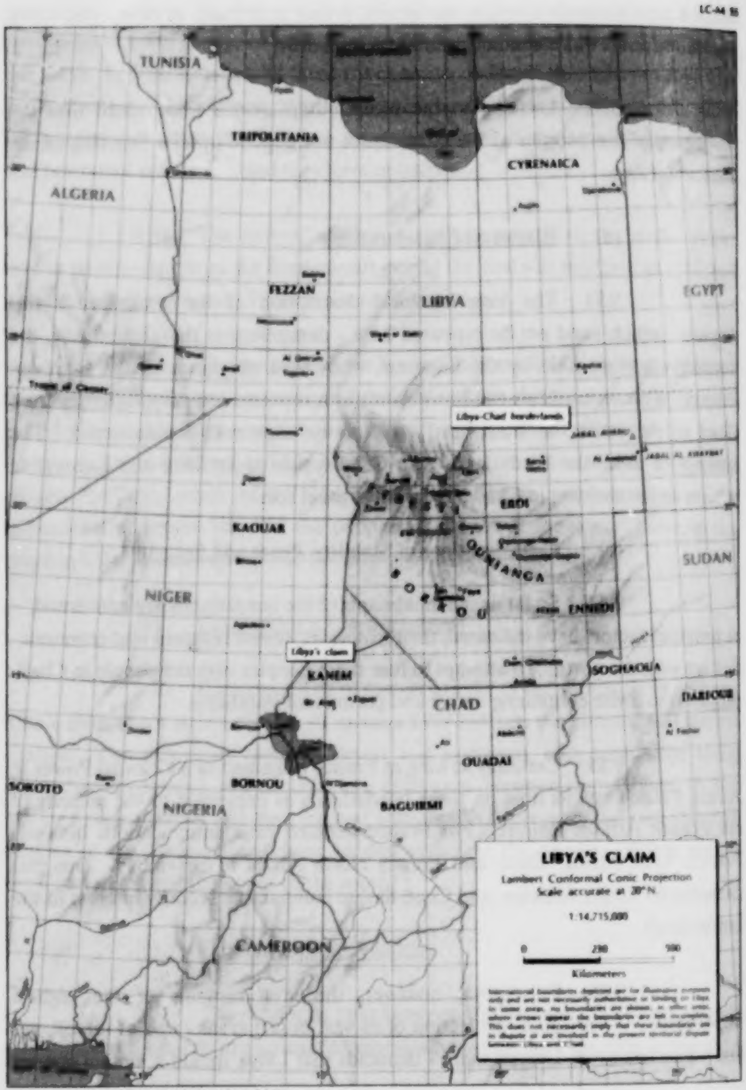
9.56 For Libya, however, the area remains of the highest importance[74]. For Libya, protection of its vast desert areas - and of the oil, gas and water resources located there - demands that Libya should maintain control

---

[72] See, generally, LM, para. 3.72.

[73] See, e.g., LM, paras. 5.266-5.267.

[74] See, LM, para. 3.91, et seq.


LC-44 55
TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
Tropic of Cancer
Libya-Chad borderlands
JABAL AL UWAYNAT
EBDI
KAOUAR
OUNIANGA
BORKOU
TIBESTI
ENNEDI
SUDAN
NIGER
Libya's claim
KANEM
SOGHAOUA
CHAD
DARFOUR
OUADAI
SOKOTO
BORNOU
BAGUIRMI
NIGERIA
CAMEROON
LIBYA'S CLAIM
Lambert Conformal Conic Projection
Scale accurate at 30°N.
1:14,715,000
0
250
500
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

Specially prepared for presentation to the International Court of Justice

of the Tibesti massif. The reality of this security interest is sufficiently demonstrated by the concern expressed by Italy during its negotiations with France from 1920-1934 to secure control of the Tibesti massif, down through Ennedi. It is no accident that the "Ligne Rouge" of 1983-1984 reflected the same Libyan concern[75].

9.57 In sum, therefore, it is Libya's submission that all these "equitable" considerations support Libya's claim that it has title to most of the borderlands, and that a precise boundary can be identified by reference to these considerations, coupled with an accurate appraisal of the limits of effective, and legally valid, French control and occupation (Map LC-M 55). For Chad can have no better title than had France, and in the borderlands it is Libya that has the better title.

---

[75] See, LM, Map No. 109, referred to there at para. 6.85.

SUBMISSIONS

Having regard to the various international treaties, agreements, accords and understandings and their effect or lack of effect on the present dispute, as set out in Libya's Memorial and in preceding parts of this Counter-Memorial;

In view of the other facts and circumstances having a bearing on this case, as discussed above and in Libya's Memorial;

In the light of the conduct of the Parties, of the conduct of other States or political, secular or religious forces, whose conduct bears on the rights and titles claimed by the Parties, and of the conduct of the indigenous peoples whose territories are the subject of this dispute;

In application of the principles and rules of international law of relevance to this dispute;

May it please the Court, rejecting all contrary claims and submissions:

To adjudge and declare, as follows:

1. That there exists no boundary, east of Toummo, between Libya and Chad by virtue of any existing international agreement.

2. That in the circumstances, therefore, in deciding upon the attribution of the respective territories as between Libya and Chad in accordance with the rules of international law applicable in this matter, the following factors are relevant:

(i) that the territory in question, at all relevant times, was not terra nullius;

(ii) that title to the territory was, at all relevant times, vested in the peoples inhabiting the territory, who were tribes, confederations of tribes or other peoples owing allegiance to the Senoussi Order who had accepted Senoussi leadership in their fight against the encroachments of France and Italy on their lands;

(iii) that these indigenous peoples were, at all relevant times, religiously, culturally, economically and politically part of the Libyan peoples;

(iv) that, on the international plane, there existed a community of title between the title of the indigenous peoples and the rights and titles of the Ottoman Empire, passed on to Italy in 1912 and inherited by Libya in 1951;

(v) that any claim of Chad rests on the claim inherited from France;

(vi) that the French claim to the area in dispute rested on "actes internationaux" that did not create a territorial boundary east of Toummo, and that there is no valid alternative basis to support the French claim to the area in dispute.

3. That, in the light of the above factors, Libya has clear title to all the territory north of the line shown on Map 105 in Libya's Memorial and shown again here on Map LC-M 55, that is to say the area bounded by a line that starts at the intersection of the eastern boundary of Niger and 18°N latitude, continues in a strict southeast direction until it reaches 15°N latitude, and then follows this parallel eastwards to its junction with the existing boundary between Chad and Sudan.

(Signed) ....

Abdullati Ibrahim El-Obeidi
Agent of the Socialist People's
Libyan Arab Jamahiriya

TERRITORIAL DISPUTE
(LIBYAN ARAB JAMAHIRIYA/CHAD)

COUNTER-MEMORIAL

SUBMITTED BY THE

GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

EXHIBITS
VOLUME 2
27 MARCH 1992

Exhibit LC-M 1

COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 392 44 41 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 3649928

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 392 44 41 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 3649928

86337

10 March 1992

Sir,

Further to the Deputy-Registrar's letter of 20 February 1992, I have the honour to transmit to Your Excellency, under separate cover, 25 copies of additional Annex P62 to the Memorial of Chad (Addendum to Livre VI) in the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, which, although mentioned on the list of documents communicated to you with the Deputy-Registrar's letter, had not been included in Livre VI.

Accept, Sir, the assurances of my highest consideration.

Eduardo Valencia-Ospina
Registrar

His Excellency
Mr. Abdulati Ibrahim El-Obeidi
Agent of the Libyan Arab Jamahiriya
before the International Court of Justice
Tripoli
Libyan Arab Jamahiriya

cc: Mr. Walter D. Sohier, Frere Cholmeley, Paris

COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 392 44 41 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 3649928

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 392 44 41 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 3649928

86140 20 February 1992

Sir,

Further to the Registrar's letters dated 5 and 15 November 1991, /. I have the honour to transmit to Your Excellency herewith a copy of a letter of 22 January 1992 from the Agent of Chad in the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), as also of the list of documents and the certifications which accompanied it, and of the letter sent by me in reply.

Twenty-five copies of the additional Annexes to the Memorial of Chad (Livres VI and VII of the Memorial), referred to in the above-mentioned letter, are being transmitted to you under separate cover.

Accept, Sir, the assurances of my highest consideration.

Yours faithfully,

Bernard Noble
Deputy-Registrar

His Excellency
Mr. Abdulati Ibrahim El-Obeidi
Agent of the Libyan Arab Jamahiriya
before the International Court of Justice
Tripoli
Libyan Arab Jamahiriya

cc: Mr. Walter D. Sohier, Frere Cholmeley, Paris, together with copy enclosure

RÉPUBLIQUE DU TCHAD
MINISTÈRE DES AFFAIRES ÉTRANGÈRES
DIFFÉREND FRONTALIER LIBYE-TCHAD

Agent du Gouvernement près la C.I.J.
TÉLÉPHONE 51 43 56 – FAX 51 43 56

COPIE

UNITÉ – TRAVAIL – PROGRÈS

N'Djaména, le 22 Janvier 1992

C. I. J. I. C. J.
ARCHIVES
Le-The
Entrée-In
Dossier-File
Réponse-Reply

Monsieur E. VALENCIA-OSPINA
Greffier
Cour Internationale de Justice
Palais de la Paix
2517 KJ - LA HAYE, Pays-Bas

Monsieur le Greffier,

Conformément aux directives contenues dans vos lettres du 4 et du 12 Novembre 1991, j'ai fait procéder au tirage, en 125 exemplaires - qui vous sont adressés ce jour par envoi séparé - des documents pertinents à l'appui des thèses formulées par la République du Tchad dans son Mémoire et qui avaient été seulement déposés au Greffe le 26 Août 1991 sous forme de "productions". Ces documents font donc désormais l'objet des livres VI et VII du Mémoire de la République du Tchad.

Y figurent l'ensemble des "productions", à l'exception des documents qui avaient, par ailleurs été publiés en annexes dans les livres II à V et de ceux qui font l'objet d'une publication sous une forme qui les rend facilement accessibles et qui ont été déposés au Greffe pour la seule commodité des Juges et de la partie libyenne. J'ajoute que certains de ces documents ne sont reproduits que par extraits dans les livres VI et VII, conformément aux dispositions de l'article 50, paragraphe 2, Règlement de la Cour.

Je saisis cette occasion, pour vous adresser, Monsieur le Greffier, mes voeux les meilleurs à l'occasion de la nouvelle année, et vous renouvelle l'assurance de ma haute considération.

ABDERAHMAN DADI
Agent du Tchad devant
le C.I.J.

P.J. : Un bordereau des annexes figurant dans les livres VI et VII du Mémoire de la République du Tchad et une attestation certifiant la conformité de ces copies aux originaux.

COUR INTERNATIONALE DE JUSTICE
INTERNATIONAL COURT OF JUSTICE

PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 3924441 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 3649928

PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 3924441 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 3649928

Le 20 février 1992

86141

Monsieur l'Agent,

J'ai l'honneur d'accuser réception de votre lettre du 22 janvier 1992, ainsi que de 125 exemplaires d'annexes complémentaires au mémoire de votre Gouvernement en l'affaire du *Différend territorial (Jamahiriya arabe libyenne/Tchad)*, présentées ensuite des correspondances du Greffier en date des 4 et 12 novembre 1991, et qui constituent désormais les livres VI et VII dudit mémoire.

J'ai également l'honneur d'accuser réception d'un bordereau des documents figurant dans les livres VI et VII du mémoire, ainsi que de deux attestations aux termes desquelles ces documents sont certifiés conformes aux originaux, en application de l'article 50, paragraphe 1, du Règlement de la Cour.

Bonne note est prise de ce que, d'une part, les annexes complémentaires susvisées ne comprennent pas ceux des documents déposés en tant que "productions" qui apparaîtraient déjà en annexe au mémoire ou qui seraient publiés sous une forme les rendant facilement accessibles au public et de ce que, d'autre part, certaines de ces annexes complémentaires sont constituées d'extraits "pertinents" de documents complets, au sens de l'article 50, paragraphe 2, du Règlement.

Je fais tenir copie de votre lettre et des documents qui l'accompagnaient, ainsi que des annexes complémentaires considérées et de la présente à M. l'Agent de l'autre Partie.

Veuillez agréer, Monsieur l'Agent, les assurances de ma très haute considération.

Le Greffier adjoint de la Cour

Bernard Noble

Monsieur Abderahman Dadi
Agent de la République du Tchad
près la Cour internationale de Justice
a.b.s. Ambassade de la République du Tchad
52, boulevard Lambermont
1030 Bruxelles
Belgique

COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 3924441 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 3649928

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 3924441 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 3649928

85705

19 November 1991

Sir,

Further to my letters of 5 and 15 November 1991, I have the honour to transmit to Your Excellency herewith a copy of a letter, /. received in the Registry on 18 November 1991, from the Agent of Chad in the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), as well as of the certification which accompanied that letter.

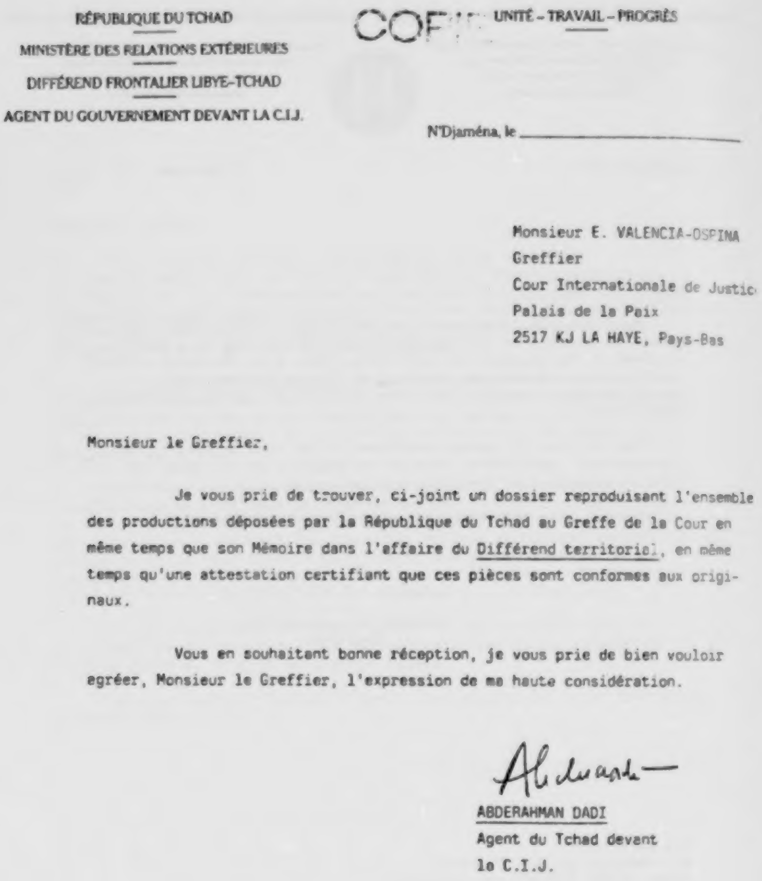
The full set of copies, mentioned in the same letter, of the "productions" deposited by Chad in the Registry on 26 August 1991 is being communicated to you under separate cover.

Accept, Sir, the assurances of my highest consideration.

Eduardo Valencia-Ospina
Registrar

His Excellency
Mr. Abdulati Ibrahim El-Obeidi
Agent of the Libyan Arab Jamahiriya
before the International Court of Justice
Tripoli
Libyan Arab Jamahiriya

cc: Mr. Walter D. Sohier, Frere Cholmeley, Paris, together with copy of enclosure



RÉPUBLIQUE DU TCHAD
MINISTÈRE DES RELATIONS EXTÉRIEURES
DIFFÉREND FRONTALIER LIBYE-TCHAD
AGENT DU GOUVERNEMENT DEVANT LA C.I.J.

COP

UNITÉ - TRAVAIL - PROGRÈS

N'Djaména, le ______________________

Monsieur E. VALENCIA-OSPINA
Greffier
Cour Internationale de Justic
Palais de la Paix
2517 KJ LA HAYE, Pays-Bas

Monsieur le Greffier,

Je vous prie de trouver, ci-joint un dossier reproduisant l'ensemble des productions déposées par la République du Tchad au Greffe de la Cour en même temps que son Mémoire dans l'affaire du Différend territorial, en même temps qu'une attestation certifiant que ces pièces sont conformes aux originaux.

Vous en souhaitant bonne réception, je vous prie de bien vouloir agréer, Monsieur le Greffier, l'expression de ma haute considération.

ABDERAHMAN DADI
Agent du Tchad devant
la C.I.J.

RÉPUBLIQUE DU TCHAD
MINISTÈRE DES RELATIONS EXTÉRIEURES
DIFFÉREND FRONTALIER LIBYE-TCHAD
AGENT DU GOUVERNEMENT DEVANT LA C.I.J.

UNITÉ - TRAVAIL - PROGRÈS

N'Djaména, le ____________________

ATTESTATION

Je soussigné, Agent de la République du Tchad près la Cour Internationale de Justice en l'affaire du Différend territorial certifie par la présente, la conformité des pièces produites dans le dossier ci-joint aux originaux.

ABDERAHMAN DADI

COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 392 44 41 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 364 99 28

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 392 44 41 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 364 99 28

85695

15 November 1991

Sir,

Further to my letter of 5 November 1991, I have the honour to transmit to Your Excellency herewith, for your information, a copy of a letter dated 11 November 1991 from the Agent of Chad in the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), together with a copy of the letter sent by me in reply. /.

Accept, Sir, the assurances of my highest consideration.

Eduardo Valencia-Ospina
Registrar

His Excellency
Mr. Abdulati Ibrahim El-Obeidi
Agent of the Libyan Arab Jamahiriya
before the International Court of Justice
Tripoli
Libyan Arab Jamahiriya

cc: Mr. Walter D. Sohier, Frere Cholmeley, Paris, together with copy of enclosures

RÉPUBLIQUE DU TCHAD
MINISTÈRE DES RELATIONS EXTÉRIEURES
DIFFEREND FRONTALIER LIBYE-TCHAD
AGENT DU GOUVERNEMENT DEVANT LA C.I.J.

UNITÉ - TRAVAIL - PROGRÈS

N'Djaména, le 11 NOV. 1991

Monsieur E. VALENCIA-OSPINA
Greffier
Cour Internationale de Justic
Palais de la Paix
2517 - LA HAYE, Pays-Bas

Monsieur le Greffier,

Je vous remercie de votre lettre du 4 Novembre qui a reçu toute mon attention.

Comme vous le demandez dans cette lettre, je vous ferai parvenir dans les meilleurs délais une copie certifiée conforme de l'ensemble des productions que la République du Tchad a déposées auprès du Greffe en même temps que son Mémoire. Dans le même esprit, je vous serais reconnaissant de bien vouloir me faire parvenir un jeu des documents que, pour sa part, la Jamahiriya Arabe Libyenne a déposés au Greffe en même temps que son propre Mémoire.

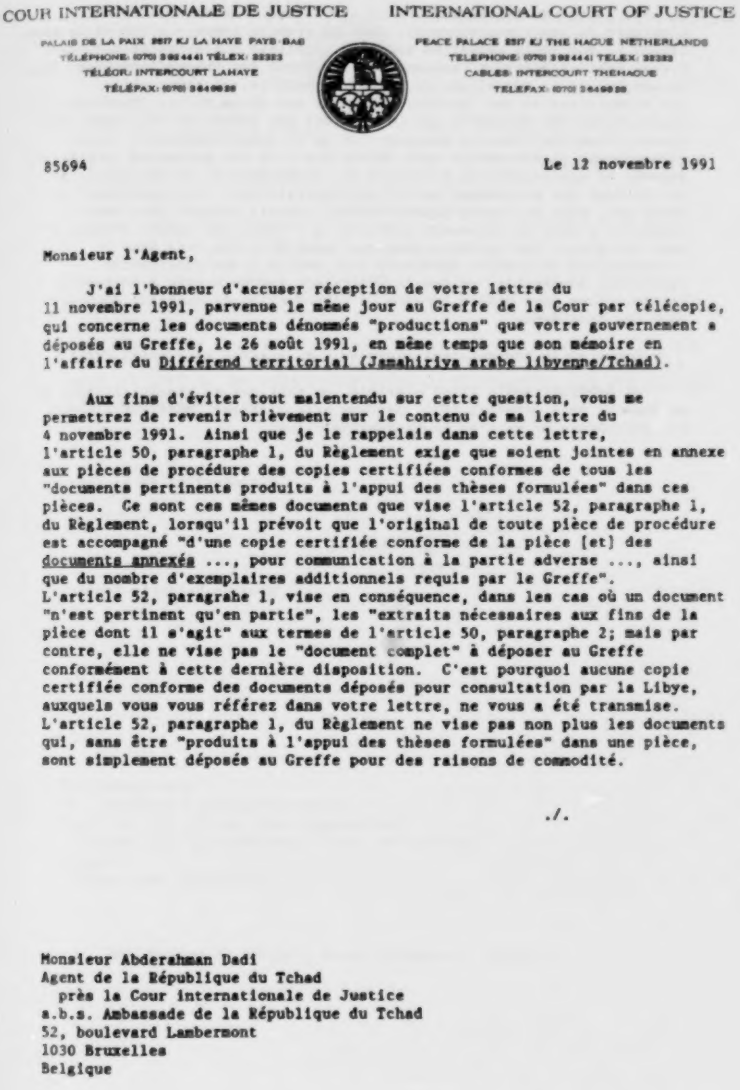
Je fais également procéder à la reproduction en 125 exemplaires de certains documents qui ont, par erreur, été produits sans qu'aucun extrait ne figure en annexe.

En revanche, il me semble qu'il n'y a pas lieu de procéder ainsi en ce qui concerne d'autres productions dont certains extraits sont reproduits en annexes mais qui ne sont pertinents qu'en partie. Ces documents ont été déposés au Greffe en application des dispositions de l'article 50, paragraphe 2 du Règlement de la Cour.

De même, si je ne peux qu'être d'accord avec vous sur le fait que le Règlement de la Cour ne fait pas de distinction entre documents publiés et documents non publiés, il me semble que l'exigence de la reproduction, en 125 exemplaires, de certains documents publiés sous une forme qui les rend facilement accessibles et que la République du Tchad n'a déposés au Greffe que pour la commodité des Juges et de la partie libyenne, relève d'une interprétation peu libérale du Règlement. Je me permets en outre d'attirer votre attention sur la très lourde charge financière que cette exigence que, me semble-t-il, la pratique antérieure de la Cour n'impose pas rigoureusement, ferait peser sur mon pays. Je vous serais donc obligé de bien vouloir y renoncer.

Vous remerciant par avance de votre compréhension, je vous prie de croire, Monsieur le Greffier, à ma très haute considération.

ABDERAHMAN DADI
Agent du Tchad devant
la C.I.J.



COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 3924441 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 3649928

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 3924441 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 3649928

85694

Le 12 novembre 1991

Monsieur l'Agent,

J'ai l'honneur d'accuser réception de votre lettre du 11 novembre 1991, parvenue le même jour au Greffe de la Cour par télécopie, qui concerne les documents dénommés "productions" que votre gouvernement a déposés au Greffe, le 26 août 1991, en même temps que son mémoire en l'affaire du Différend territorial (Jamahiriya arabe libyenne/Tchad).

Aux fins d'éviter tout malentendu sur cette question, vous me permettrez de revenir brièvement sur le contenu de ma lettre du 4 novembre 1991. Ainsi que je le rappelais dans cette lettre, l'article 50, paragraphe 1, du Règlement exige que soient jointes en annexe aux pièces de procédure des copies certifiées conformes de tous les "documents pertinents produits à l'appui des thèses formulées" dans ces pièces. Ce sont ces mêmes documents que vise l'article 52, paragraphe 1, du Règlement, lorsqu'il prévoit que l'original de toute pièce de procédure est accompagné "d'une copie certifiée conforme de la pièce [et] des documents annexés ..., pour communication à la partie adverse ..., ainsi que du nombre d'exemplaires additionnels requis par le Greffe". L'article 52, paragrahe 1, vise en conséquence, dans les cas où un document "n'est pertinent qu'en partie", les "extraits nécessaires aux fins de la pièce dont il s'agit" aux termes de l'article 50, paragraphe 2; mais par contre, elle ne vise pas le "document complet" à déposer au Greffe conformément à cette dernière disposition. C'est pourquoi aucune copie certifiée conforme des documents déposés pour consultation par la Libye, auxquels vous vous référez dans votre lettre, ne vous a été transmise. L'article 52, paragraphe 1, du Règlement ne vise pas non plus les documents qui, sans être "produits à l'appui des thèses formulées" dans une pièce, sont simplement déposés au Greffe pour des raisons de commodité.

./.

Monsieur Abderahman Dadi
Agent de la République du Tchad
près la Cour internationale de Justice
a.b.s. Ambassade de la République du Tchad
52, boulevard Lambermont
1030 Bruxelles
Belgique

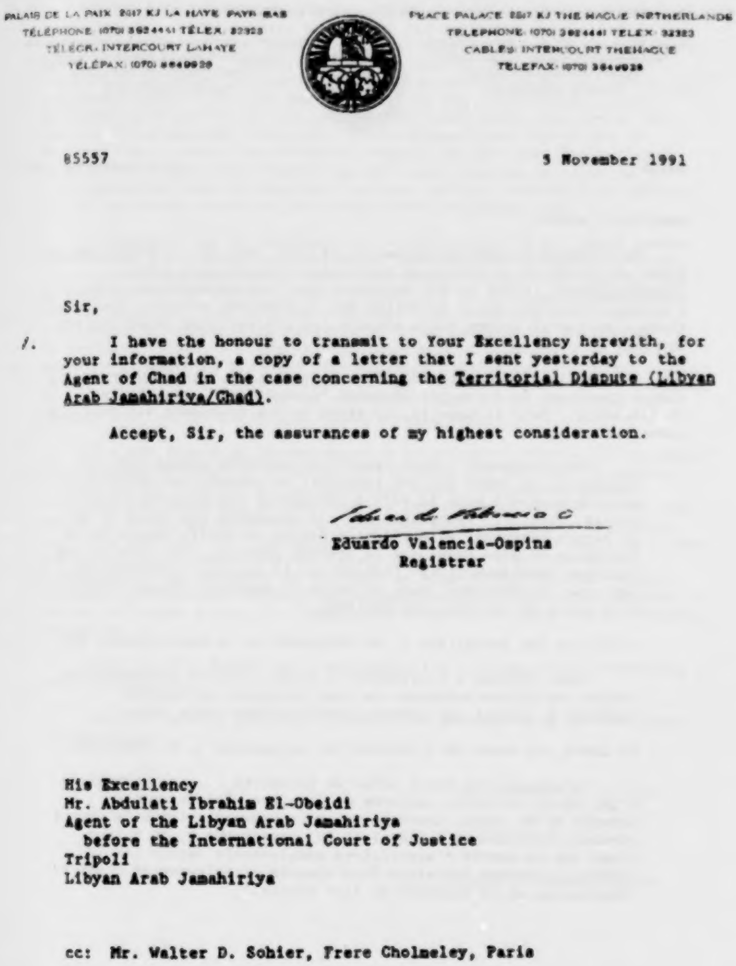
Ma lettre du 4 novembre 1991 n'avait donc d'autre objet que d'obtenir de votre gouvernement, dans un premier temps - c'est là le plus urgent -, une copie certifiée conforme, destinée à l'autre Partie, de toutes les "productions" présentées "à l'appui des thèses formulées" dans le mémoire de la République du Tchad, et ensuite, en temps utile, 125 exemplaires de ces "productions". Au cas où parmi les "productions" figureraient des documents qui ne seraient pas présentés "à l'appui des thèses formulées" dans le mémoire - ce qu'il appartiendrait à votre gouvernement de déterminer dans chaque cas - ou des documents "complets", déposés en application de l'article 50, paragraphe 2, du Règlement, il est évident que ma demande ne s'y appliquerait pas. Je rappellerai en outre que, dans ma lettre susmentionnée, j'avais indiqué que, même lorsqu'il s'agit de documents produits "à l'appui des thèses formulées" dans une pièce, une certaine souplesse peut être observée dans l'éventualité où lesdits documents font partie d'une publication facilement accessible, et que le Greffe est toujours prêt à rechercher les solutions appropriées lorsque la reproduction de certains documents pose des problèmes.

Copie de la présente est adressée à M. l'Agent de l'autre Partie.

En espérant avoir ainsi clarifié, en tant que de besoin, l'objet de ma demande du 4 novembre 1991, je vous prie d'agréer, Monsieur l'Agent, les assurances de ma très haute considération.

Le Greffier de la Cour

Eduardo Valencia-Ospina



PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE (070) 3924441 TÉLEX 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX (070) 3649928

PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE (070) 3924441 TELEX 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX (070) 3649928

85557

5 November 1991

Sir,

/. I have the honour to transmit to Your Excellency herewith, for your information, a copy of a letter that I sent yesterday to the Agent of Chad in the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad).

Accept, Sir, the assurances of my highest consideration.

Eduardo Valencia-Ospina
Registrar

His Excellency
Mr. Abdulati Ibrahim El-Obeidi
Agent of the Libyan Arab Jamahiriya
before the International Court of Justice
Tripoli
Libyan Arab Jamahiriya

cc: Mr. Walter D. Sohier, Frere Cholmeley, Paris

COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 392 44 41 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 3649928

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 392 44 41 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 3649928

85556

Le 4 novembre 1991

Monsieur l'Agent,

Me référant au mémoire déposé le 26 août 1991 par la République du Tchad en l'affaire du Différend territorial (Jamahiriya arabe libyenne/Tchad), ainsi qu'aux documents qui l'accompagnaient, j'ai l'honneur d'appeler votre attention sur le problème suivant, apparu au terme d'un nouvel examen dudit mémoire par les services compétents du Greffe.

Lors de la présentation du mémoire, vous avez déposé au Greffe un nombre important de documents dénommés "productions", répartis en 16 classeurs. Dans le mémoire, le dépôt de ces documents est expliqué comme suit :

> "Avertissement : sous réserve de quelques exceptions, la République du Tchad n'a pas reproduit en annexes les documents publiés auxquels elle se réfère (documents des Nations Unies, cartes, etc...). Toutefois, pour la commodité des juges et de la Partie libyenne, elle a déposé auprès du Greffe nombre de ces documents en même temps que le présent mémoire. La liste de ces "annexes complémentaires" (auxquelles il est fait référence en tant que 'productions' dans le corps du mémoire) figure ci-après à la suite de la table des matières."

L'article 50, paragraphe 1, du Règlement de la Cour dispose que

> "Sont jointes à l'original de toute pièce de procédure des copies certifiées conformes de tous documents pertinents produits à l'appui des thèses formulées dans cette pièce."

En outre, en vertu de l'article 52, paragraphe 1, du Règlement,

> "L'original de toute pièce de procédure ... est accompagné d'une copie certifiée conforme de la pièce, des documents annexés et de toutes traductions, pour communication à la partie adverse conformément à l'article 43, paragraphe 4, du Statut, ainsi que du nombre d'exemplaires additionnels requis par le Greffe; il pourra toutefois être demandé ultérieurement d'autres exemplaires si le besoin s'en fait sentir."

./.

Monsieur Abderahman Dadi
Agent de la République du Tchad
près la Cour internationale de Justice
a.b.s. Ambassade de la République du Tchad
52, boulevard Lambermont
1030 Bruxelles
Belgique

Certes c'est normalement à la partie concernée qu'il appartient, au stade initial, de déterminer quels sont les documents pertinents "produits à l'appui des thèses formulées" dans la pièce de procédure que cette partie soumet. Toutefois, pour ce qui est du mémoire de la République du Tchad, il convient d'observer que référence est faite, dans l'argumentation, à la fois aux "annexes" et aux "productions", sans qu'aucune distinction ne soit apparemment faite entre les unes et les autres. Il m'apparaît donc que, vu les dispositions sus-citées du Règlement de la Cour, les documents déposés en tant que "productions" - ou tout au moins ceux d'entre eux qui sont invoqués aux fins de l'argumentation dans le mémoire - auraient dû être annexés à ce dernier et par conséquent produits en un même nombre d'exemplaires.

J'ajouterai que le Règlement de la Cour ne fait à cet égard aucune distinction entre documents publiés et documents non publiés, et qu'en l'occurrence figurent, parmi les "productions" soumises au Greffe, nombre de documents issus des archives diplomatiques et militaires françaises. Dans la pratique, une certaine souplesse peut néanmoins être observée, s'agissant de documents faisant partie d'une publication facilement accessible. Ainsi, lorsque la reproduction d'un document à un grand nombre d'exemplaires présente des problèmes techniques (par exemple dans le cas de cartes de grand format), il est loisible aux parties d'examiner la question avec le Greffier en vue de parvenir à un arrangement qui réponde aux besoins de la Cour et de l'autre partie.

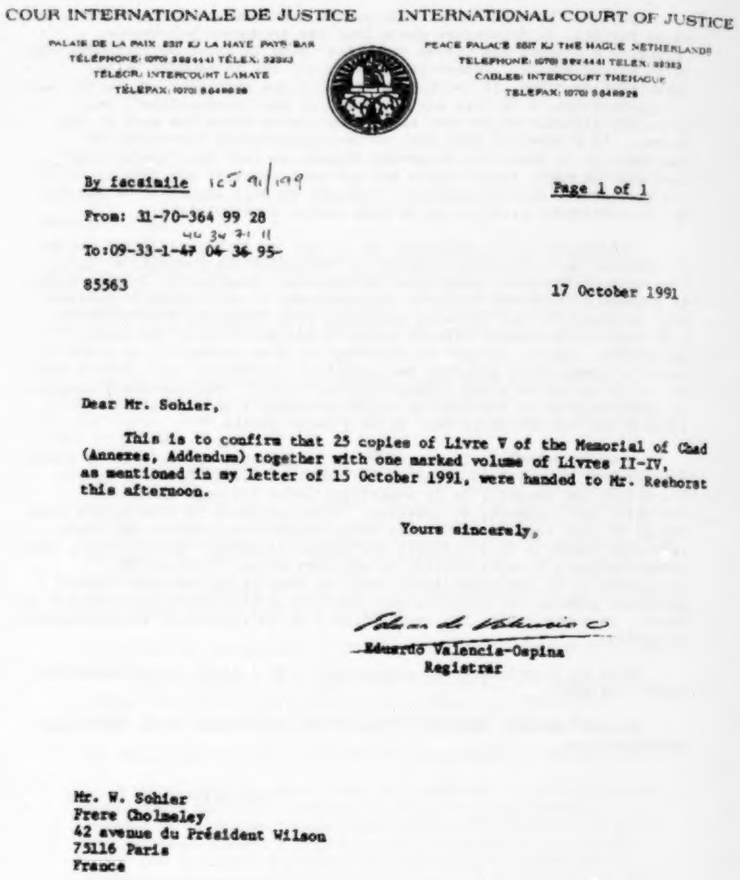
Au stade actuel de la procédure en la présente affaire, il me paraît être urgent, eu égard au principe de l'égalité des parties, de mettre l'agent et les conseils de la Jamahiriya arabe libyenne en mesure d'étudier les documents en question. C'est pourquoi je vous serais très obligé de bien vouloir me fournir dans les meilleurs délais une copie certifiée conforme de l'ensemble des pièces dénommées "productions", pour communication à l'autre Partie, en application de l'article 52, paragraphe 1, du Règlement de la Cour, en vous priant de bien vouloir également prendre les dispositions nécessaires afin que soient déposés au Greffe, en temps utile, 125 exemplaires d'un ou plusieurs volumes desdits documents.

Copie de la présente est communiquée à M. l'Agent de la Jamahiriya arabe libyenne.

Veuillez agréer, Monsieur l'Agent, les assurances de ma très haute considération.

Le Greffier de la Cour

Eduardo Valencia-Ospina



COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 392 44 41 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 364 99 28

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 392 44 41 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 364 99 28

By facsimile ICJ 91/199 Page 1 of 1

From: 31-70-364 99 28
44 34 71 11
To:09-33-1-~~47~~ ~~04~~ ~~36~~ 95-
85563

17 October 1991

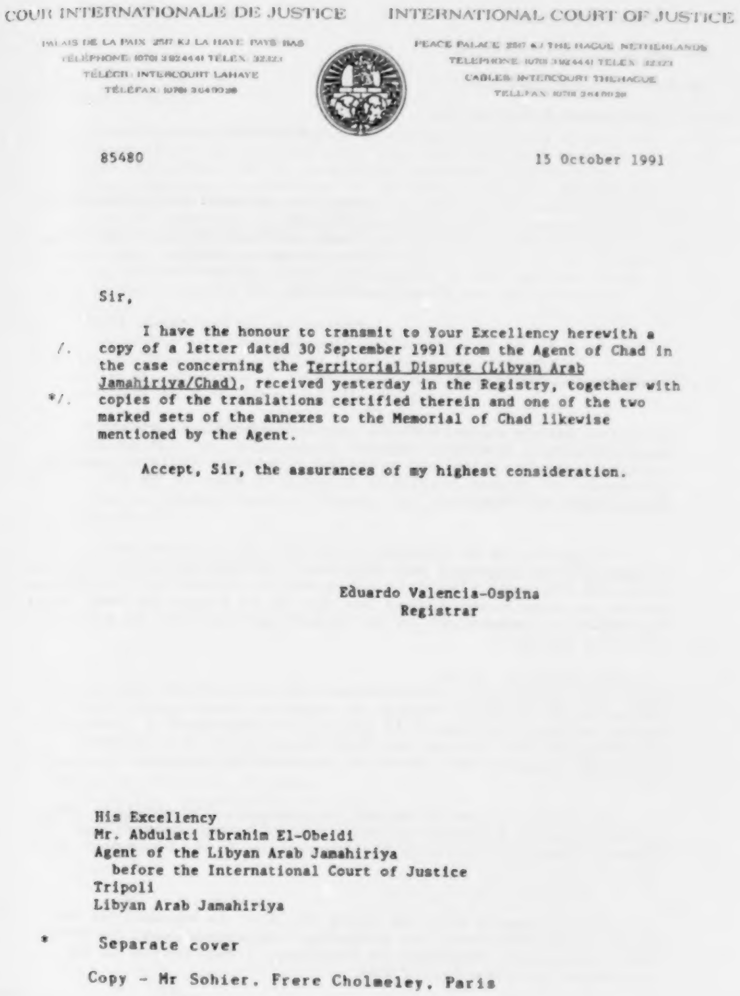
Dear Mr. Sohier,

This is to confirm that 25 copies of Livre V of the Memorial of Chad (Annexes, Addendum) together with one marked volume of Livres II-IV, as mentioned in my letter of 15 October 1991, were handed to Mr. Reehorst this afternoon.

Yours sincerely,

Eduardo Valencia-Ospina
Registrar

Mr. W. Sohier
Frere Cholmeley
42 avenue du Président Wilson
75116 Paris
France



COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE (070) 392 44 41 TÉLEX 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX (070) 364 99 28

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE (070) 392 44 41 TELEX 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX (070) 364 99 28

85480

15 October 1991

Sir,

I have the honour to transmit to Your Excellency herewith a
/. copy of a letter dated 30 September 1991 from the Agent of Chad in the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), received yesterday in the Registry, together with
*/. copies of the translations certified therein and one of the two marked sets of the annexes to the Memorial of Chad likewise mentioned by the Agent.

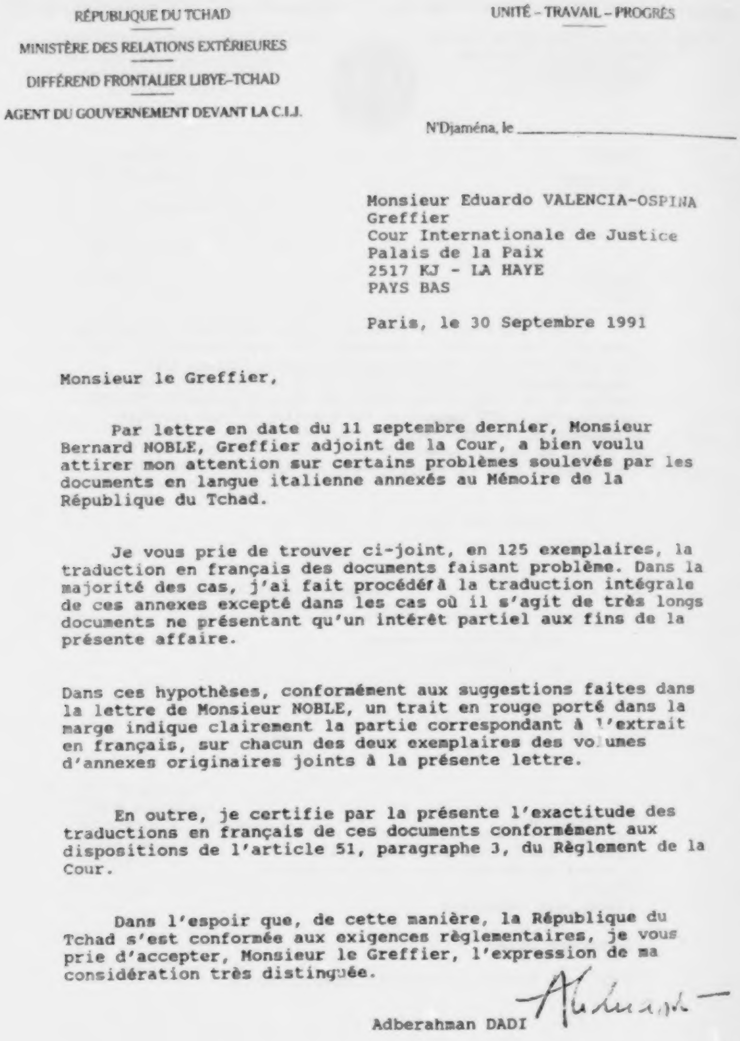
Accept, Sir, the assurances of my highest consideration.

Eduardo Valencia-Ospina
Registrar

His Excellency
Mr. Abdulati Ibrahim El-Obeidi
Agent of the Libyan Arab Jamahiriya
before the International Court of Justice
Tripoli
Libyan Arab Jamahiriya

* Separate cover

Copy - Mr Sohier, Frere Cholmeley, Paris



RÉPUBLIQUE DU TCHAD
MINISTÈRE DES RELATIONS EXTÉRIEURES
DIFFÉREND FRONTALIER LIBYE-TCHAD
AGENT DU GOUVERNEMENT DEVANT LA C.I.J.

UNITÉ - TRAVAIL - PROGRÈS

N'Djaména, le ______

Monsieur Eduardo VALENCIA-OSPINA
Greffier
Cour Internationale de Justice
Palais de la Paix
2517 KJ - LA HAYE
PAYS BAS

Paris, le 30 Septembre 1991

Monsieur le Greffier,

Par lettre en date du 11 septembre dernier, Monsieur Bernard NOBLE, Greffier adjoint de la Cour, a bien voulu attirer mon attention sur certains problèmes soulevés par les documents en langue italienne annexés au Mémoire de la République du Tchad.

Je vous prie de trouver ci-joint, en 125 exemplaires, la traduction en français des documents faisant problème. Dans la majorité des cas, j'ai fait procéder à la traduction intégrale de ces annexes excepté dans les cas où il s'agit de très longs documents ne présentant qu'un intérêt partiel aux fins de la présente affaire.

Dans ces hypothèses, conformément aux suggestions faites dans la lettre de Monsieur NOBLE, un trait en rouge porté dans la marge indique clairement la partie correspondant à l'extrait en français, sur chacun des deux exemplaires des volumes d'annexes originaires joints à la présente lettre.

En outre, je certifie par la présente l'exactitude des traductions en français de ces documents conformément aux dispositions de l'article 51, paragraphe 3, du Règlement de la Cour.

Dans l'espoir que, de cette manière, la République du Tchad s'est conformée aux exigences règlementaires, je vous prie d'accepter, Monsieur le Greffier, l'expression de ma considération très distinguée.

Adberahman DADI

85504 Le 14 octobre 1991

Monsieur l'Agent,

J'ai l'honneur de confirmer qu'en réponse à la lettre du Greffier adjoint en date du 11 septembre 1991, vous avez bien voulu me faire parvenir aujourd'hui, en 125 exemplaires, une série de traductions en français intégrales ou partielles des documents en italien annexés au mémoire que votre Gouvernement a déposé au Greffe le 26 août 1991 dans l'affaire du Différend territorial (Jamahiriya arabe libyenne/Tchad). En même temps, vous m'avez fourni deux jeux complets des annexes audit mémoire qui, suivant la suggestion faite dans sa lettre par le Greffier adjoint, ont été marqués de façon à permettre un repérage plus facile dans le texte original des extraits représentés par les traductions partielles.

Ces envois ont été accompagnés par la remise au Greffe d'une lettre en date du 30 septembre 1991 par laquelle, en vous référant à l'article 51, paragraphe 3, du Règlement de la Cour, vous avez certifié l'exactitude des traductions dont il s'agit.

J'envoie copie de cette lettre, avec des exemplaires des traductions et l'un des deux jeux d'annexes, à Monsieur l'Agent de la Jamahirya arabe libyenne.

Veuillez agréer, Monsieur l'Agent, les assurances de ma très haute considération.

Le Greffier de la Cour

Eduardo Valencia-Ospina

Monsieur Abderahman Dadi
Agent de la République du Tchad
près la Cour internationale de Justice
a.b.s. Ambassade de la République du Tchad
52, boulevard Lambermont
1030 Bruxelles
Belgique

FRERE CHOLMELEY
Conseils Juridiques
42, Avenue du Président Wilson, 75116 Paris.
Téléphone: 33 1 44 34 71 00
Téléfax: 33 1 44 34 71 11
Télex: 645944 FRERCHO

Eduardo Valencia-Ospina, Esq.
Registrar
International Court of Justice
Peace Palace
2517 The Hague
The Netherelands

Paris, 7 October 1991

Attention Mr. Thirlway

Dear Registrar,

Thank you for your letter of 4 October 1991 concerning the photocopying of certain documents deposited by Chad in the case concerning Territorial Dispute (Libyan Arab Jamahiriya/Chad for the use of Libya, and at Libya's expense.

I have been in touch with Mr. Aat Reehorst, Promotion Projects, Maasboulevard 114, 3011 PX Rotterdam, who has agreed to do this work for Libya. Since Mr. Reehorst will be passing through Paris tomorrow, I shall show him your letter and discuss with him the care that must be taken in carrying out this work. We have worked for many years with Mr. Reehorst; he is most dependable.

On his return to The Hague on Wednesday, Mr. Reehorst will call Mr. Thirlway to make the necessary arrangements.

Many thanks for your assistance.

With best regards,

Sincerely yours,

Walter D. Sohier

COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 3924441 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 3649928

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 3924441 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 3649928

By facsimile 125 91/189

Page 1 of 1

From: 31-70-364.99.28

To: 33-1-44 34 71 11

85460

4 October 1991

Dear Mr. Sohier,

Referring to your telephone conversation with Mr. Thirlway concerning the documents deposited in the Registry by Chad at the time of filing of its Memorial in the case concerning Territorial Dispute (Libyan Arab Jamahiriya/Chad), I consider that, exceptionally and in view of the special circumstances of this case, I can authorise the photocopying of the documents by a local firm specializing in such work, for the benefit, and at the expense, of the Libyan Government. The documents may only be removed from the Registry for the minimum time necessary for this work, and must be returned in good order, arranged in their respective files, exactly as they are now.

Would you please let me know the name and address of the firm you have in mind, and the name of the person there who will be responsible for the safety of the documents?

Yours sincerely,

Eduardo Valencia-Ospina
Registrar

Mr. Walter Sohier
Frere Cholmeley
42, avenue du Président Wilson
75116 Paris
France

COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE: (070) 392 44 41 TÉLEX: 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX: (070) 364 99 28

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE: (070) 392 44 41 TELEX: 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX: (070) 364 99 28

85357

18 September 1991

Sir,

Further to the Registrar's letter of 26 August 1991 I have the honour to send you herewith a copy of a letter which I addressed on 11 September 1991 to the Agent of Chad in the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad). /.

Accept, Sir, the assurances of my highest consideration.

Bernard Noble
Deputy-Registrar

His Excellency
Mr. Abdulati Ibrahim El-Obeidi
Agent of the Libyan Arab Jamahiriya
before the International Court of Justice
Tripoli
Libyan Arab Jamahiriya

COUR INTERNATIONALE DE JUSTICE
PALAIS DE LA PAIX 2517 KJ LA HAYE PAYS-BAS
TÉLÉPHONE (070) 3924441 TÉLEX 32323
TÉLÉGR.: INTERCOURT LAHAYE
TÉLÉFAX (070) 3649928

INTERNATIONAL COURT OF JUSTICE
PEACE PALACE 2517 KJ THE HAGUE NETHERLANDS
TELEPHONE (070) 3924441 TELEX 32323
CABLES: INTERCOURT THEHAGUE
TELEFAX (070) 3649928

85347

Le 11 septembre 1991

Monsieur l'Agent,

J'ai l'honneur de me référer au mémoire de la République du Tchad dans l'affaire concernant le Différend territorial (Jamahiriya arabe libyenne/Tchad), déposé le 26 août 1991. Lors du dépôt de ce mémoire, il a été observé que la question pouvait se poser de savoir si les dispositions du Règlement de la Cour relatives aux documents annexés qui ne sont pas rédigés dans une des langues officielles de la Cour avaient été strictement respectées; le Greffier a admis que le mémoire avait été déposé valablement, mais la question avait été réservée pour plus ample informé.

Après examen, il apparaît qu'un certain nombre d'annexes en langue italienne n'ont pas été accompagnées d'une traduction certifiée exacte dans une des langues officielles de la Cour, comme l'exige l'article 51, paragraphe 3, du Règlement. Sauf erreur, c'est le cas des annexes 77, 123, 124, 130, 138, 142, 143, 161, 165, 167, 172, 173, 176 à 180, 182 à 184, 186, 188, 189, 192 et 196.

Un nombre important d'autres documents rédigés en italien sont accompagnés d'un passage en français qui semble être la traduction d'un extrait du document italien. L'article 51, paragraphe 3, déjà mentionné, dispose que :

> "La traduction [d'un document annexé] peut être limitée à une partie ou à des extraits d'une annexe mais, en ce cas, elle est accompagnée d'une note explicative indiquant les passages traduits."

./.

Monsieur Abderahman Dadi
Agent de la République du Tchad
  près la Cour internationale de Justice
a.b.s. Ambassade de la République du Tchad
52, boulevard Lambermont
1030 Bruxelles
Belgique

Aucune note de ce type n'a été fournie au sujet des documents susmentionnés : sauf erreur, il s'agirait des annexes 22 à 24, 61, 108, 109, 111, 115, 117, 132, 137, 151, 160, 166, 168 à 171, 175, 181, 187, 190, 193, 197, 203, 204, 333 et 337. Les annexes 195 et 205, en italien, sont accompagnées d'un texte qui paraît être une déclaration sur la teneur du document plutôt qu'une traduction complète ou partielle.

Il me semble que le moyen le plus simple de rendre le mémoire du Tchad conforme au Règlement à cet égard serait que Votre Excellence veuille bien me fournir deux jeux des volumes d'annexes dans lesquels chaque texte en italien serait marqué de manière à indiquer clairement la partie qui correspond à l'extrait en français joint au document. Un de ces jeux d'annexes serait transmis par mes soins à l'Agent de la Libye, et l'autre serait conservé au Greffe, où les Membres de la Cour pourraient le consulter. Je dois cependant réserver la possibilité que le Tchad ait à prendre des dispositions pour que les annotations appropriées soient portées sur d'autres exemplaires, au cas où cela serait requis par la Cour ou demandé par l'autre Partie.

D'autre part, je saurais gré à Votre Excellence de bien vouloir m'adresser, dès que possible, en 125 exemplaires, une série de traductions - certifiées exactes -, dans l'une des langues officielles de la Cour, des documents rédigés en italien pour lesquels il n'a pas encore été fourni de traduction (y compris les annexes 195 et 205 mentionnées ci-dessus). Ces traductions pourraient, bien entendu, correspondre à des parties ou extraits de documents, pourvu que l'explication requise par l'article 51, paragraphe 3, du Règlement soit fournie.

J'adresse copie de la présente lettre à l'agent de la Libye.

Veuillez agréer, Monsieur l'Agent, les assurances de ma très haute considération.

Le Greffier adjoint de la Cour

Bernard Noble

Exhibit LC-M 2

Bureau Populaire
de la Grande Jamahiriya Arabe
Libyenne Populaire et Socialiste

بسم الله الرحمن الرحيم

المكتب الشعبي
للجماهيرية العربية الليبية الشعبية الاشتراكية العظمى
باريس

لا ديموقراطية بدون مؤتمرات شعبية

Point de démocratie sans congrès populaires

PARIS, le 31/01/1992
N° 7.8.75

التاريخ ______
الموافق ______
الرقم ______

Le Bureau Populaire de la Grande Jamahiriya Arabe Libyenne Populaire et Socialiste présente ses compliments au Ministère des Affaires Etrangères (Direction d'Afrique du Nord et du Moyen Orient) et sollicite son assistance pour accéder aux archives de la République Française et de ses anciennes possessions en Afrique qui sont relatives à l'Affaire du Différend Territorial (Jamahiriya Arabe Libyenne c. Tchad), pendante devant la Cour internationale de Justice et inscrite au rôle général sous le numéro 83.

La Libye désire insister sur le caractère d'extrême urgence que revêt sa requête étant donné l'état d'avancement de la procédure qui se trouve à la phase du contre-mémoire dont le dépôt simultané par les Parties à l'affaire est fixé au 27 mars 1992. Cette production est la dernière de la phase écrite, sauf si la Cour estime nécessaire, après le dépôt du contre-mémoire, qu'un mémoire en réplique doit être déposé par les Parties à l'affaire. Selon le Statut et le Règlement de la Cour, les Parties à l'instance doivent avoir fourni la totalité des documents en support de leurs argumentation et prétentions avant l'ouverture de la phase orale.

* * *

La Libye connait l'existence de la loi française n° 79-18 du 3 janvier 1979 sur les archives et les décrets et arrêtés pris pour son application, loi qui organise la conservation des documents dans l'intérêt public, en particulier pour les besoins de la justification des droits des personnes publiques. La Libye comprend que l'article 3 de la loi effectue une distinction entre les "archives privées" et les "archives publiques" et c'est à cette dernière catégorie que la Libye demande l'accès.

La Libye note que l'article 6 de la loi prévoit que les documents d'archives publiques pourront être librement consultés à l'expiration d'un délai de trente ans ou des délais spéciaux prévus à l'article 7 de cette même loi. L'alinéa 5 de ce dernier article fixe à soixante ans à compter de la date de l'acte le délai au-delà duquel les documents qui contiennent des informations intéressant la sûreté de l'Etat (français) ou la défense nationale. La Libye a aussi pris connaissance des deux décrets n° 79-1035 et 79-1038 du 3 décembre 1979 pris en application de l'article 7.

L'article 7 du décret n° 79-1035 prévoit qu'une demande de dérogation aux conditions de communication des archives de la défense peut être soumise au Premier ministre en ce qui concerne les archives qui lui sont rattachés et au ministre chargé de la défense en ce qui concerne les autres archives. Cet article précise que le Premier Ministre ou le Ministre chargé de la défense peut accorder des dérogations générales pour certains fonds ou parties de fonds visés à l'article 6 lorsque les documents qui les composent auront atteint trente ans d'âge. L'article 2 du décret n° 79/1038 prévoit aussi une demande de dérogation qui peut être soumise au Ministre de la Culture après accord de l'autorité qui a effectué le versement ou qui assure la conservation des archives et la même possibilité de dérogations générales sont certains fonds ou parties de fonds.

En tout état de cause et pour autant que de besoin la Libye sollicite des dérogations pour les archives de plus de trente ans d'âge.

• • •

Dans son mémoire déposé devant la Cour internationale de Justice le 26 août 1991, la République du Tchad fait état d'une liste d'Annexes et Annexes complémentaires et de "productions déposées à l'appui du mémoire de la République du Tchad dans l'affaire du Différend territorial Jamahiriya arabe libyenne c. Tchad et non publiées".

Dans la liste des Annexes, on note qu'une section II traite de documents diplomatiques provenant de divers fonds d'archives. Les Annexes 18 à 132 ont plus de 60 ans. Les Annexes contenant des documents d'archives et se trouvant entre les Annexes 133 et 280 ont entre 30 et 60 ans. Parmi celles-ci se trouvent des documents relatifs aux négociations du Traité de Tripoli de 1955.

Le Tchad a classé les documents d'archives figurant sur cette liste de Production en deux catégories. La première est intitulée "II. Documents diplomatiques". Sous cette appellation impropre se trouvent en fait regroupées plusieurs sortes de documents. En premier lieu des documents diplomatiques proprement dits: Il s'agit de notes verbales entre la France et l'Italie. (Voir par exemple les Productions 19, 22, 23 et 43). En second lieu des documents internes français. Par exemple des échanges entre l'Ambassade de France à Londres, au Caire, à Rome et le Ministre français des Affaires étrangères. (Voir en particulier les Productions 37, 10, 11, 35 et 37). Il s'agit aussi de correspondances entre les autorités du Territoire du Tchad et les autorités de l'AEF, entre le Territoire du Tchad et le ministre des Colonies, entre le Territoire du Tchad et le ministre des Affaires étrangères, de rapports militaires, de rapports du quai d'Orsay et de correspondances entre différents ministères tel que celui de la Guerre et des Affaires étrangères ou du ministère de la Guerre et des Colonies. (Voir par exemple les Productions 5, 6, 8, 9, 18, 21, 26, 27 à 33, 38, 39, 41, 44 à 49 et 58). On notera aisément que les documents d'archives proviennent tous de fonds créés par la France, c'est-à-dire même des fonds d'archives du ministère de la Guerre et que les Productions 41, 58 et 80 sont des archives militaires soumises au délai de communication de 60 ans, c'est-à-dire postérieures à 1931.

La deuxième catégorie est intitulée "III. Documents d'administration interne". Sous cette catégorie se trouvent groupés, pour la période allant après l'indépendance du Tchad survenue le 15 décembre 1960, de nombreux rapports militaires, principalement des Bulletins politiques mensuels (dont par ailleurs la séquence n'est pas complète). Nous comprenons donc que ces documents se situent dans le délai de communication entre 60 et 30 ans. Les Productions 85 à 122 proviennent de différents fonds d'archives, y compris des Archives de la Guerre, Armée de Terre, Vincennes. On y trouve même en particulier une Production 122 provenant de ces archives et qui est soumise au délai de 30 ans.

La Libye en conclut que la République du Tchad a pu avoir accès aux archives publiques détenues par la République Française jusqu'en 1960, c'est-à-dire aux archives couvertes par le délai de 30 à 60 ans (et même à certains documents datant de moins de 30 ans) prévu par la loi française. Sans doute, la République du Tchad est-elle devenue indépendante le 15 décembre 1960, soit il y a plus de trente ans, et du fait de cette indépendance la France ne saurait invoquer la sûreté de l'Etat français ou la défense nationale française aujourd'hui et par conséquent le délai de 60 ans pour refuser au Tchad - et à la Libye - la consultation des archives publiques relatives à ses anciennes possessions en Afrique qui sont devenues indépendantes en 1960 ou pour l'Algérie le 15 mars 1962.

La Libye, comme elle l'a fait dans l'Affaire de la délimitation du plateau continental (Tunisie/Jamahiriya Arabe Libyenne) portée devant la Cour internationale de Justice et qui a fait l'objet de son jugement du 24 février 1982, a commissionné des chercheurs qui ont pu avoir accès aux différents fonds d'archives. A la différence de l'affaire jugée en 1982, où les recherches documentaires concernaient des documents d'archives publiques d'avant la seconde guerre mondiale, la présente affaire pendante devant la Cour implique des documents d'archives publiques jusqu'au 15 décembre 1960, date de l'indépendance de la République du Tchad. A la différence de l'affaire jugée en 1982, les chercheurs commissionnés par la Libye n'ont pu consulter, et se sont vu refuser l'accès à un certain nombre de fonds d'archives datant entre 60 et 30 ans d'âge, en particulier les archives du quai d'Orsay relatives au Traité de Tripoli du 10 août 1955 et de l'accord de 1956 relatif à la frontière avec l'Algérie et les archives du Ministère des Armées à Vincennes pour la période jusqu'au 15 décembre 1960. Dans la recherche d'une solution judiciaire au différend entre la Tunisie et la Libye, notre Ambassade avait demandé par une Note verbale l'accès à certaines archives et nous nous rappelons que vous y aviez répondu favorablement, sans doute dans le but d'assurer l'égalité des parties devant le juge international. C'est dans ce même esprit et but de la recherche d'une solution judiciaire par la Cour au différend territorial avec le Tchad que la Libye effectue la présente requête d'accéder aux archives publiques de la République Française.

* * *

Outre l'affaire entre la Libye et la Tunisie déjà rappelée, nous notons que la France semble avoir aussi été coopérative dans une autre affaire portée devant la Cour. Il s'agit de l'Affaire du Différend Frontalier (Burkina Faso/République du Mali) dont le jugement a été rendu le 22 décembre 1986. Dans cette affaire, une Chambre de la Cour s'est penchée "sur les divers moyens de preuves invoquées par les Parties à l'appui du tracé de la frontière qu'elles revendiquent..." (C.I.J. Recueil 1986, p. 576, par. 44). A cet égard, en ce qui concerne les cartes et les faits les paragraphes 57, 58 et 64 peuvent avoir une certaine pertinence.

Au surplus, on notera dans cette affaire que des documents d'archives publiques françaises soumis à la Cour sont datés entre le délai de 30 ans et 60 ans.

Encore plus récemment la République Française a été aussi coopérative dans une autre affaire portée devant un tribunal international ad hoc siégeant à Genève et qui a rendu sa sentence le 31 août 1989. Il s'agit du Tribunal arbitral pour la détermination de la frontière maritime Guinée-Bissau/Sénégal. Sentence du 31 juillet 1989. Dans cette affaire ont été produits des documents d'archives publiques françaises datant de plus de 30 ans), en particulier ceux relatifs à un accord conclu par un échange de lettres entre la France et le Portugal du 26 avril 1960 au sujet de la frontière en mer entre la République du Sénégal et la Province portugaise de Guinée, avant l'indépendance du Sénégal le 20 août 1960.

La République Française est un Etat partie au Statut de la Cour internationale de Justice et la Libye est confiante qu'elle n'agira pas de sorte de rompre l'égalité qui doit exister entre les parties à un procès et qu'elle ne tient pas à ce que aux fins d'une bonne administration de la justice la Cour se réfère à sa jurisprudence établie depuis longtemps. En effet, la Cour permanente de Justice internationale dans l'Affaire relative à la juridiction territoriale de la Commission Internationale de l'Oder la Cour a été amené à rendre une ordonnance le 20 août 1929 par laquelle elle "écarte des débats" un certain nombre de documents "Considérant que dans une affaire déterminée, il ne saurait être tenu compte d'éléments de preuve qui ne sont pas admissibles au regard de certaines des Parties en cause" (C.P.J.I. Série A n° 23, p. 41). Un auteur a écrit sur cette ordonnance:

> "The Court's decision appears to have been based, not on the confidential character of the documents as such, but on the fact that since their confidential character made them inaccessible to certain of the State parties to the proceedings, the Court could not properly take them into account in reaching a judgment" (D. V. Sandifer, Evidence before International Tribunals, University Press of Virginia, 1975, p. 379).

* * *

L'affaire pendante devant la Cour internationale de Justice est une affaire qui, bien sûr n'est pas comparable à celles qui ont été citées dans le sens où la Cour considère chaque affaire portée devant elle comme un unicum. Mais la Libye, qui a fait son maximum pour obtenir les documents d'archives publiques français, a besoin, dans le cadre de la procédure judiciaire en cours devant un organe des Nations Unies, d'accéder aux archives françaises.

La Libye ne demande pas qu'elle puisse consulter des documents que le Tchad ne pourrait pas aussi consulter. La Libye demande de bénéficier du même accès que le Tchad aux archives françaises. Par exemple, le Tchad a produit des documents provenant de fonds auxquels la Libye n'a pas eu accès et il est important que la Libye puisse compléter son dossier en regardant les documents auxquels font référence les documents produits par le Tchad mais qu'ils n'ont pas produits. Autre exemple, il est parfois difficile d'interpréter un document si l'on n'est pas en position de lire le document à l'origine du document produit. Par ailleurs, certains rapports militaires (allant jusqu'en 1960) produits par le Tchad sont mensuels et un grand nombre de la séquence sont absents. Il conviendrait pour la Libye de reconstituer le dossier des rapports politiques mensuels établis par les militaires français en poste dans la préfecture du BET et qui sont gardés dans les archives du service des armées à Vincennes auxquelles la Libye n'a pu avoir accès.

Autre exemple, le Tchad a produit un certain nombre de documents français (du quai d'Orsay) relatifs aux négociations du Traité de Tripoli en 1955, mais la Libye n'y a pas eu accès. Il conviendrait que le dossier complet, puisqu'il a été donné au Tchad de le consulter, puisse l'être aussi par la Libye.

Enfin un dernier exemple, il peut s'avérer que le Tchad n'a pas eu accès - ou même ait eu accès - à des fonds d'archives mais qu'il n'a pas produit devant la Cour, des documents qui s'y trouvent, parce que, entre autres raisons, le Tchad n'a pas considéré ces documents comme pertinents dans l'affaire alors qu'au contraire, la Libye pourrait considérer ces documents comme pertinents. Il importe en tout cas que ces fonds aient été consultés par les deux Parties au litige devant la Cour.

Nous désirerions, en outre, avoir accès aux archives publiques du Ministère de la Guerre à Vincennes, série Tchad, pour consulter en particulier les cartons suivants 1 à 44 couvrant la période 1901-1965 et plus précisément les cartons 13 à 15, les cartons 19 à 28 "Soudan anglo-égyptien, Ouaddaï, Borkou, Ennedi, Tibesti" où se trouvent les bulletins mensuels de renseignements dont la République du Tchad a tiré des extraits, ainsi que les cartons 29 et 30.

Au dépôt des archives d'outre-mer, à Aix-en-Provence, nous aimerions consulter les documents classés dans le fond "Affaires politiques" en particulier:

- Aff.pol. 338 d-1-8. Rapports trimestriels Tchad (1914-1923) et les dossiers 6-7 que nous n'avons pas pu consulter

- Aff.pol. 897 d-3. Libye - Frontière Libye-Tchad, 1941

- Aff.pol. 2114 d-7-10. Rapport de la mission au Fezzan, Julien Vieroz 1954-5; frontière avec la Libye, surveillance de la frontière, manoeuvres anglo-libyennes en direction du Tibesti 1954-1955, qu'il ne nous a pas été possible de consulter
- Aff.pol. 2125 d-4 et 6, Libyens au Tchad, 1954-1955.
- 2187 d-5. AEF 1954 affaires diplomatiques, revendications territoriales
- Aff.pol. 2205 d-1. Libye AEF, relations avec la Libye 1951-1954
- Aff.pol. 2205 d-7. AEF 51/55. Relations avec la Libye. 1) accords provisoires 1951-1954, 2) négociations, accords frontaliers, accord d'amitié, maintien de l'ordre aux frontières
- Aff.pol. 2262 d-5. AEF 49/55. a) Oasis d'Aouzou 54/54, évacuation, maintien de l'ordre aux frontières, b) négociations franco-libyennes.

Dans le fond AEF 5 D, nous aimerions consulter les documents suivants :

- AEF 5 D-60. 1924-1926. Tchad: troubles, zones impénétrées, police
- AEF 5 D-273 - 275 - 276 - 281 - 286, Conférence des Gouverneurs, 1951, 1954, 1956.

Aux archives du quai d'Orsay, nous aimerions consulter les documents d'archives publiques concernant les négociations du Traité de Tripoli de 1955 et de l'accord de 1956 entre la France et la Libye relative à la frontière algérienne que le Tchad a pu consulter au contraire de la Libye.

Le Bureau saisit cette occasion pour renouveler au Ministère des Affaires Etrangères les assurances de sa haute considération.

Exhibit LC-M 3

In the Name of God the Compassionate the Merciful

Telegram. To Colonel Muammar Al-Qaddhafi, vanquisher of tyrants, saviour of the wretched and persecuted throughout the world.

We the inhabitants of Ouzou are writing to you once again from among the death and destruction and elimination of the rights of man, animals and inanimate objects in the wake of the iniquitous aggression to which we were subjected on 8.8.1987 at the hands of the dictator Habre. Living things were of no account on that day. There was terror and alarm, everyone fled for safety to the mountains, and our families were dispersed. We tasted the bitterness of sorrow, and spent three years in a destitute state until the promised day of certain victory arrived. We then all agreed to return to our homeland at Ammou, and to make contact with our people in the Jamahiriyya. We held several meetings which led to a conference in which we freely and with no dissenting voice whatsoever took decisions that brought together the past, present and future as follows:

1) To confirm our acknowledgment of you as our lifelong leader, teacher and guide.

2) To submit a memorandum giving our views on the matter of Ouzou to the International Court of Justice.

3) To put into practice a programme of armed popular struggle to defend our principles and convictions, to protect our future with arms and to defend the security of the Jamahiriyya in the south.

In order to give practical expression to our loyalty to the revolution and the nation, we reiterate our hope that our Leader will provide us with the necessary means to create miracles and eliminate any shadow of the slightest doubt in this regard.

May God preserve you.

Forward! The revolutionary struggle for freedom and prosperity goes on.

The People of Ouzou

(stamp):
Secretariat of the General Popular Conference
Secretariat of the Popular Conference of
Marzaq Municipality
Basic Popular Conference, Ouzou

Minutes of the meeting of the inhabitants of the Ouzou Strip

The meeting convened on 11/3/1991 in the courtyard of the mosque at Ammou, and was attended by 4000 (four thousand) members of the tribes of which the original inhabitants of the Ouzou Strip consist, as follows:- (spellings probable)

1) Dardahkasha 2) Tadma 3) Amhawiya 4) Madana
5) Tarandra 6) Tarama 7) Adwiya 8) Ahda
9) Tazba 10) Arna 11) Tazarya 12) Hakatya
13) Maghda 14) Karasah 15) Shouda 16) Qanda
17) Faratna 18) Darsanah 19) Tamjara 20) Tawiya
21) Adraka 22) Qabda 23) Koushda 24) Tigha
25) Taraswa 26) Qayeda 27) Qaladha 28) Madah
29) Warakna 30) Bashra 31) Sardagha 32) Zouya

Those attending discussed the future of the Ouzou Strip. After in-depth debate and with no dissent whatsoever, the attendees adopted the following resolutions:-

1) To submit the enclosed memorandum to the International Court of Justice.

2) To empower those persons in the attached list to sign the memorandum.

3) To form a committee to submit the memorandum to the Court of Justice, such persons being those named in list no.2 attached.

Preparatory committee supervising the conference business:-

Name	Capacity	Signature
Al-Hajj Jaber Wahli Shaha	Shaikh of Arbi	(signed)
Al-Hajj Othman Adam Oughni	Shaikh of Ouzou Centre	"
Al-Hajj El-Senoussi Agi Saleh	Shaikh of Ouzou	"
Al-Hajj Barka Sidi Muhammad	Shaikh of Ouzou	"
Al-Hajj Wardqou Saleh Muhammad	Shaikh of Warou	"
Al-Hajj Kunni Koury Agi Qalma	Shaikh of Warou	"
Al-Hajj Omar Muhammad Marday	Shaikh of Amoushi	"
Al-Hajj Moulay Mahmoud Wardqou	Shaikh of Ammou	"
Al-Hajj Allabdou Saleh Ougou	Shaikh of Qazandou	"

In the Name of God the Compassionate the Merciful

Memorandum by the inhabitants of the Ouzou Strip to the International Court of Justice

To the President and Members of the International Court of Justice

Peace be to those who follow the right path and establish justice and defend the rights of man everywhere.

We, the inhabitants of the Ouzou Strip of all social strata, have decided at a conference held by us to submit this memorandum to the International Court of Justice as a historical document issued by us in expression of our wishes regarding the claim by the Government of Chad that this Strip is part of its territory. This claim is invalid on our own testimony.

We wish to inform the International Court of Justice of the established historical facts of the matter, through which we and our forebears have lived throughout the long history of this area, generation after generation since the dawn of time, as follows:

Firstly: Before the French and Italian colonisers came to North Africa we enjoyed natural freedom as one community which was socially, culturally, economically and geographically cohesive. We knew no borders within our own homeland, and there were no identity cards or passports. We lived the life of indigenous nomads on our own land and under our own sky in security and confidence, with freedom of movement and residence. We practised herding and cattle rearing in our wadis and villages in the Ouzou Strip. We traded, worked and were educated in the Kafra oases in south-eastern Libya and in the oases of the Fezzan in the south and in other Libyan towns. Neither ourselves nor our ancestors over the ages have ever lived in any place other than this particular geographical environment. We have never known a country or homeland other than Libya in all our dealings and in all our modes of life across the years. Our traditions and relics, our holdings in the way of palm groves and the like, and our social relationships, are the best evidence for this.

Secondly: We are not nationals of the State of Chad, to which we have never belonged, to which we have never voluntarily been, or with which we have not had economic, social or cultural dealings. The existence of natural barriers between us in the form of a chain of mountains is the best evidence for that.

Thirdly: We refuse bargaining or the use of force to compel us to become nationals of the State of Chad through the mere wish to expand on a political decision taken by that Government based on spurious expansionist borders drawn up by the western coloniaist powers in the wake of their invasion of the area.

Fourthly: The right of self-determination. If peoples have the right to determine their future, it is for us to determine our future, and not some outside party. Our decision on our future is that we are and have always been associated with Libya as country and state, and we find it thus naturally, economically, culturally, socially and geographically. Nothing will change this, and we will stand up to anyone who attempts to manipulate our future.

We ask the International Court to appreciate the lasting fact of our sentiment and conviction that we are part of Libya and that our future lies with her.

Any ruling given by the International Court contrary to our convictions will expose our future to risk. It would make our life unbearable, and would mark the beginning of our problem and not its end. We would be obliged to make ourselves and what we own available to defend our convictions and liberate what our will and principles have declared.

Lastly, we trust that the International Court, in its great wisdom, will give our memorandum the closest of attention and will examine the issue in depth for, more importantly than a case of a dispute over territory between two states, it is a case of people rather than territory. Man is the higher in value and, first and last, is entitled to his rights on the basis that of his own free will he is the maker of life and civilisation above the ground and below the sun.

Peace and the blessings of God be upon you.

Conference of the inhabitants of the Ouzou Strip, held at Ammou on 11/3/1991.

Signatures on pages 1, 2, 3 and 4 attached.

List of those authorised to sign the memorandum, with signatures

No.	Name	Family name	Signature
1	Ali Muhammad Wamer Marda	Marda	(signed)
2	Abubakr Ali Othman	Barkay Malouma	"
3	Ghaniwah Abdullah Abdou	Qanwour	"
4	Allashi Othman Musa	Allashi Souqi	"
5	Ibrahim El-Senoussi Muhammad	Malouma Ibrahim	"
6	Qoukni Taher Ouknou		"
7)	Kunni Koury Agi Qalma	Shunni Koury Abi	"
8)	Barka Hassan Muhammad Teghou	Barkay Hassandi	"
9)	Wardqou Saleh Muhammad		"
10)	Wardqou Yunis Hassan	Hanasmi	"
11)	Omar Muhammad Marday	Ameri	"
12)	Ali Bazanqa Ibrahim	Qahni	"
13)	Allabdou Saleh Ougri		"
14)	Adam Ahmed Dezzi	Adam Boughi	"
15)	Othman Adam Oughni		"
16)	Rajab Ibrahim Saleh	Rajab Abou	"
17)	Jaber Wahli Shaha		"
18)	Allahouza Yussuf Mahmoud		"
19)	El-Senoussi Agi Saleh		"
20)	Hassan Sidi Muhammad		"
21)	Abdullah Suleiman Abubakr		"
22)	Musa Muhammad Abubakr		"
23)	Moulay Mahmoud Wardqou		"
24)	Abubakr Saleh Issa		"
25)	Adam Yaski Ersa Wazou		"
26)	Muhammad Ali Madghou		"
27)	Barka Hassan Muhammad		"
28)	Muhammad Hassan Al-Zawi	Muhammad Salaam	"
29)	Sidi Issa Musa	Kassi Koukay	"

(6)

No.	Name	Family name	Signature
30)	Muhammad Barka Woulay		"
31)	Adam Ahmed Barka		"
32)	Saleh li Barka		"
33)	Ahmed oury Sidi		"
34)	Adam Mousa Aghray		"
35)	Muhammad Adam Anqari		"
36)	Agi Adam Taher		"
37)	Allashi Agi Abubakr		"
38)	Abubakr Idriss Sidi		"
39)	Shadah Idriss Sidi		"
40)	Saleh Kaddi Toukah		"
41)	Barka Agi Saleh		"
42)	Idriss Abubakr Othman		"
43)	Moulay Musa Amhay		

List of those authorised to sign the memorandum, with signatures (contd.)

No.	Name	Family name	Signature
44)	Ahmed Ali Jalwar		(signed)
45)	Adam Muhammad marday		"
46)	Shagham Musa Ougay		"
47)	Allahouza Anou Qalma		"
48)	Muhammad Shadah Mardah		"
49)	Shatay Hassan Hamedi		"
50)	Kouki Shadi Ougay		"
51)	Ghalli Bazou Ougay		"
52)	Ali Lamin Mada		"
53)	Mirsal Saleh Habib		"
54)	Kalli Hassan Almay		"
55)	Allabdou Salem Othman		"
56)	May Saleh Ougri		"
57)	El-Senoussi Mahmoud Warya		"
58)	El-Senoussi Lamin Woulay		"
59)	Ali Taher Ghalli		"
60)	Adam Ibrahim Mahma		.
61)	Yussuf Wahli Shaha		"
62)	Saleh Taher Asmay		"
63)	Shaha Hassan Toukah		"
64)	Issa Muhammad Kalmay		"
65)	Qaday Hamed Issa		"
66)	Muhammad Ali Barka		"
67)	Agi Ahmed Barka		"
68)	Ali Koury Toukah		"
69)	Barka Adam Jirah		"
70)	Rajab Agi Muhammad		"
71)	Hamed Saleh Adam		"
72)	Ali Saleh Adam		"
73)	Kousah Ardi Othman		"
74)	Linou Abdullah Othman		"
75)	Salehin Muhammad Hilali		"
76)	Ibrahim Suleiman Boubakr		"
77)	Lamin Ibrahim Shaha		"
78)	Agi Abdullah Hassan		"
79)	El-Senoussi Musa Asmay		"
80)	Ramadhan Yussuf Mahmoud		"
81)	Saleh Boughr Sidi		"
82)	Muhammad Othman Boughr		"
83)	Omar Saleh Muhammad		"
84)	Taher Muhammad Marday		"
85)	Muhammad Adam Toukah		"
86)	Sidi Koukry		"

(7)

List of those authorised to sign the memorandum, with signatures
(contd.)

No.	Name	Family name	Signature
87)	Sidi Abubakr Idriss		(signed)
			(8)
88)	Obeid Al-Qader Muhammad Wamer		"
89)	Husain Saleh Ougri		"
90)	Ibrahim Ali Othman		"
91)	Yussuf Shaha Othman		"
92)	dam Malqa Sunni		"
93)	Agi Ibrahim Sidi		"
94)	Abubakr Agi Shagham		"
95)	Tushi Ani Ibrahim		"
96)	Suleiman Oushi Ismail		"
97)	Muhammad Sidi larbay		"
98)	Hassan Musa Toukah		"
99)	Issa Lamin Mada		"
100)	Agi Abubakr Mada		"

List of names of committee members charged by the public to submit the memorandum to the International Court of Justice

No.	Name
1	Ali Muhammad Wamer Marda
2	Abubakr Ali Othman
3)	Ibrahim El-Senoussi Muhammad
4)	Chandiwah Abdullah Abdou
5)	Allashi Othman Musa
6)	Qoukni Taher Ouknou
7)	Wardqou Yunis Hassan
8)	Kunni Koury Agi Qalma
9)	Wardqou Saleh Muhammad
10)	Allabdou Saleh Ougri
11)	Omar Muhammad Marday
12)	Othman Adam Oughni
13)	Ali Bazanqa Ibrahim
14)	Rajab Ibrahim Saleh
15)	jaber Wahli Shaha
16)	El-Senoussi Agi Saleh
17)	Hassan Sidi Muhammad
18)	Moulay Mahmoud Wardqou
19)	Omar Saleh Muhammad
20)	Saleh Ali Barka
21)	Ali Saleh Jaber
22)	Sidi Koukri
23)	Adam Ahmed Dezzi
24)	Musa Muhammad Abubakr
25)	Kalah Hassam Allamoui
26)	Husain Muhammad Adam
27)	Moulay Musa Asmay
28)	El-Senoussi Musa Asmay
29)	Adam Malqa Sunni
30)	Muhammad Suleiman Wardmi
31)	Yussuf Shaha Othman

Exhibit LC-M 4

PRESIDENCE DU CONSEIL

SECRÉTARIAT GÉNÉRAL
DU GOUVERNEMENT

Direction de la Documentation
14-16, rue Lord-Byron, Paris (8e)

LA DOCUMENTATION FRANÇAISE

29 novembre 1948.

MINISTERE
DES AFFAIRES ETRANGERES

Service d'Information
et de Presse

NOTES DOCUMENTAIRES ET ETUDES

N° 1.026

(SERIE INTERNATIONALE. - CLXXXVIII)

Situation économique et politique des anciennes colonies italiennes

(D'après le rapport de la Commission d'enquête
des quatre Puissances dans les anciennes colonies italiennes)

DEUXIEME PARTIE

LIBYE

SOMMAIRE

La Tripolitaine 2
I. — *Population* 2
II. — *Structure économique* 3
III. — *Commerce et Industrie* 5
IV. — *Transports et communications* 8
V. — *Ordre public* 8
VI. — *Partis politiques et autres organisations* 9
VII. — *Vœux de la population* 10
Conclusions générales 14

La Cyrénaique 15
I. — *Population* 16
II. — *Structure économique* 16
III. — *Commerce et industrie* 18
IV. — *Transports et communications* 20
V. — *Ordre public* 20
VI. — *Partis politiques et autres organisations* 21
VII. — *Vœux de la population* 22
Conclusions générales 24

Le Fezzan 26
Vœux de la population 26
Conclusions générales 29

Carte de la Libye 31

SITUATION ÉCONOMIQUE ET POLITIQUE DES ANCIENNES COLONIES ITALIENNES

(d'après le rapport de la Commission d'enquête des Quatre Puissances
dans les anciennes colonies italiennes)

DEUXIEME PARTIE

LIBYE

LA TRIPOLITAINE

I. — POPULATION

Selon les renseignements fournis par l'Administration militaire britannique, la Tripolitaine comptait, à la fin de 1947, 805.957 habitants, dont 729.500 Libyens musulmans, 44.419 Italiens, 28.606 Juifs et 3.432 personnes de nationalités diverses. Ces chiffres sont tirés des statistiques établies pour le rationnement, et ils sont peut-être supérieurs à la réalité. Plus de 65 % de la population totale vivent dans la région côtière, entre Misourata et Zuara.

La population urbaine, qui s'élève à 163.000 âmes, représente 20 % de la population totale et comprend environ 104.000 Libyens musulmans, 20.000 Italiens et 26.000 Juifs. La ville de Tripoli compte à elle seule 138.000 habitants. La population des autres villes varie de 2.000 à 5.000 âmes.

a) Population indigène

Au point de vue ethnique, la population indigène de Tripolitaine peut être répartie entre Berbères, Arabes, Juifs, Cologhli et nègres. Néanmoins, à l'exception des Juifs, le mode de vie des habitants varie très peu d'un groupe à l'autre.

Les Berbères sont censés être les descendants des premiers habitants de Tripolitaine ; mais ils ont été dans une large mesure assimilés par les Arabes et ils ne se différencient plus de ceux-ci, au point de vue de la religion et de la langue, que dans la partie la plus occidentale du pays (Zuara, Nalut et la partie occidentale du district de Jefren). Dans ces régions, les habitants sont musulmans, de la secte des Uadite, et parlent le berbère ; mais même dans l'Ouest ils vivent souvent côte à côte dans le même village, avec des éléments de descendance arabe. Il n'existe pas de statistiques démographiques pour la population berbère. D'après des renseignements officieux d'origine italienne, les habitants de descendance berbère représentent 25 % de la totalité de la population musulmane du pays, et seraient donc plus de 182.000 personnes.

Les Arabes, qui ont envahi la Tripolitaine au VII^e et au XI^e siècle après Jésus-Christ, sont des musulmans sunnites. Ils se sont néanmoins largement mêlés aux Berbères.

Certains Juifs viennent de Cyrénaïque, où ils étaient établis depuis l'époque romaine ; certains autres d'Espagne, d'où ils furent expulsés au XV^e siècle ; ils évitent de se lier par mariage aux autres éléments de la population. Tous les Juifs parlent arabe, tout en utilisant l'hébreu comme langue religieuse et, dans certains cas, au sein de leur famille. [L'Italien s'est beaucoup répandu parmi les musulmans et les Juifs des classes supérieures.] (1)

Les Cologhli sont les descendants des soldats des anciennes garnisons turques. Ils constituent des communautés distinctes dans la région côtière.

Les nègres descendent d'anciens esclaves et ne forment une communauté distincte qu'à Tauorga, près de Misourata. Il n'existe aucune statistique démographique en ce qui concerne les deux derniers groupes.

---

(1) Addition de la délégation de la France

La population indigène se livre principalement à l'agriculture et à l'élevage. 327.000 musulmans et 600 Juifs sont des fermiers sédentaires. Les semi-nomades s'élèvent respectivement à 242.700 et 49.400 musulmans.

Cent dix mille quatre cents musulmans et 28.100 Juifs s'occupent de commerce et d'artisanat. La population sédentaire des villages est d'environ 363.000 âmes.

Selon l'Administration militaire britannique, de 1944 à 1947, plusieurs milliers de Tripolitains, qui avaient quitté le pays à la suite de la conquête italienne, sont rentrés d'Egypte et de Tunisie.

b) Population étrangère

Les Italiens constituent la majorité de la population étrangère du pays.

En 1911, la communauté italienne comptait moins de 800 âmes. Elle s'est accrue d'abord régulièrement, pour atteindre plus de 10.000 personnes en 1928 et 20.000 en 1935. Dès l'immigration paysanne, aux termes du plan de colonisation démographique, le nombre d'Italiens a augmenté rapidement. On en comptait plus de 44.000 en 1936 et 70.000 en 1940-1941. Au début de l'occupation britannique, en 1943, il n'y en avait plus que 38.200.

Selon des renseignements fournis par l'Administration militaire britannique, l'immigration des Italiens en Tripolitaine n'est autorisée que dans les limites du plan de rapatriement organisé par l'Administration, et ne concerne que les femmes et les enfants des chefs de famille habitant déjà le pays ; la politique de l'Administration vise, en effet, à maintenir la proportion actuelle de l'élément italien aussi longtemps que le statut définitif du territoire n'aura pas été fixé. La population italienne a augmenté de 962 unités à la suite des échanges de personnes qui sont intervenus entre décembre 1943 et décembre 1947, 8.688 Italiens ayant été rapatriés en Italie, tandis que 9.750 quittaient ce pays pour la Tripolitaine. Pendant la même période, la communauté italienne est passée de 38.000 à 44.149 âmes, cette augmentation étant principalement due aux naissances.

A la campagne, les Italiens travaillent dans leurs fermes ; dans les villes, ils sont surtout ouvriers spécialisés, employés de bureau et commerçants, ou appartiennent à des professions libérales.

Les communautés maltaise (environ 2.000 membres) et grecque (environ 400 membres) de Tripolitaine vivent à Tripoli. Environ 1.500 Maltais de Tripoli ont été rapatriés d'Italie, où ils avaient été déportés au cours de la guerre en Tripolitaine, en 1944 et 1945.

II. — STRUCTURE ECONOMIQUE

Observations générales

La structure économique de la Tripolitaine apparaît clairement si l'on met en regard ses ressources et ses besoins essentiels, et si l'on tient compte des importants travaux de mise en valeur et de colonisation que les Italiens avaient exécutés. Le déficit que cette comparaison révèle, les efforts faits pour le réduire et les résultats obtenus, constituent les principaux éléments du problème que pose l'équilibre économique du territoire.

Ressources naturelles

Les terres, le bétail et les pêcheries sont les ressources naturelles de la Tripolitaine. Le territoire administré par l'Administration militaire britannique compte approximativement 250.000 km2, dont 150.000 km2, soit environ les 3/5, sont, en fait, des déserts. Les 4/5 des terres susceptibles d'être exploitées ne sont propres qu'aux pâturages, de sorte que 20.000 km2 seulement peuvent être mis en culture. Les terres actuellement cultivées en partie par des colons sédentaires italiens et arabes couvrent 4.000 km2, tandis que 16.000 km2 ne portent que des cultures intermittentes pratiquées par les nomades au gré des précipitations. L'eau constitue le facteur décisif qui détermine la valeur productive des terres ; elle provient exclusivement des pluies ou du sous-sol, par voie d'irrigation, car le pays est dépourvu de rivières et de nappes d'eau. La Tripolitaine souffre périodiquement de la sécheresse. Selon un expert italien, la mise en œuvre d'un vaste programme d'irrigation permettrait de mettre en culture, de façon permanente, 40.000 km2 ; cependant, à en croire les experts britanniques, 8.000 km2 constitueraient un maximum.

Elevage

L'élevage a toujours été la principale ressource des indigènes tripolitains ; récemment encore, il occupait la première place dans l'économie du pays. De 1931 à 1935, la valeur des produits de l'élevage a dépassé celle de tous les produits de l'agriculture ; la culture des céréales a, néanmoins, été stimulée par les prix élevés et par les besoins de la guerre.

La plus grande partie du bétail appartient aux Arabes ; à l'heure actuelle, le bétail ne survit que grâce à des transhumances continuelles. Pendant les sécheresses, la mortalité du bétail est élevée. L'élevage pourrait être considérablement développé, ainsi que le commerce de ses produits ; il pourrait jouer un rôle plus important dans l'économie du pays que celui qui lui revient actuellement, mais ce résultat ne pourra être obtenu que si un contrôle est institué sur le bétail, si des travaux d'irrigation suffisants sont entrepris, et si les éleveurs combinent mieux leurs efforts avec ceux des fermiers sédentaires.

Agriculture

Il existe trois types d'agriculture en Tripolitaine. Les Européens et les Libyens pratiquent la culture par irrigation et la culture selon les méthodes de « dry farming » ; les Libyens sont les seuls, au contraire, à se livrer à l'agriculture sur le mode errant, au gré des précipitations. Les principaux produits cultivés sont : l'orge, les dattes, le blé, les olives, les amandes, le raisin, le tabac, les arachides, les fruits et les légumes.

L'orge et les dattes sont produits presqu'exclusivement par les Libyens. Les terres cultivées par les Italiens donnent une plus grande variété de produits et des récoltes plus riches que celles obtenues par les méthodes indigènes traditionnelles.

Les fruits constituent une richesse locale dont la valeur augmente. Leur culture a été très développée par les Italiens, et beaucoup d'arbres et de ceps n'ont pas encore atteint leur stade de production maximum. Les produits maraîchers sont surtout destinés à la consommation intérieure, mais cette exploitation pourrait, sans grande difficulté, être développée au point de fournir un excédent pour les marchés extérieurs. Ceci implique, toutefois, que l'on trouve des débouchés et que les moyens de transport existent.

Forêts

Les forêts ne sont pas d'une grande importance ; elles ne sont exploitées que pour satisfaire les besoins locaux.

Pêche

Il existe de bonne zones de pêche ; la pêche du thon, sa préparation et sa mise en conserve constituent une industrie d'exportation susceptible d'être développée. La pêche aux éponges, bien qu'elle ne soit pas négligeable, ne représente pas, pour l'instant, une ressource économique importante.

Population

Environ 17 % des indigènes habitent dans les villes ; plus de la moitié des autres sont des agriculteurs sédentaires. Le reste, soit 38 % du total, mènent une vie nomade ou semi-nomade, et vivent de l'élevage et des cultures occasionnelles. Les vrais nomades ne sont que 7 % de la population. Les Italiens sont des fermiers sédentaires, des commerçants et des industriels ; ils jouent un rôle important dans l'économie du pays.

La population italienne n'atteint à présent que les 2/3 du chiffre de 1939. Il en résulte une pénurie de main-d'œuvre dans les concessions italiennes ; les fermes, les principales entreprises industrielles et les divers corps de métiers ont, du fait de la réduction de la population italienne, une activité ralentie qui convient d'ailleurs aux circonstances du moment.

Besoins de la Tripolitaine

Pour évaluer utilement les besoins de la Tripolitaine, il faut tenir compte du chiffre de sa population, de sa composition démographique, de la place tenue par les nombreux éléments italiens, du stade actuel de son développement économique, des sécheresses périodiques et du niveau de vie des habitants. Il est évident que si l'on ne veut pas réduire le niveau de vie présent, qui, tant pour les Européens que pour les Arabes, est inférieur à celui d'avant-guerre, il faut développer l'exportation des produits de l'agriculture et de l'élevage, assurer à ces produits une qualité qui leur permette d'affronter la concurrence sur les marchés mondiaux, et remettre au travail les Arabes que les bouleversements récents ont contraints au chômage et dirigés vers les villes.

S'il n'est pas possible d'entreprendre de nouveau une politique d'investissements, de grands travaux et de développement économique, il sera nécessaire d'augmenter la superficie et le rendement des cultures. L'on ne peut toutefois faire mieux, en cas de sécheresse, que de limiter les dégâts.

Adaptation des ressources aux besoins

L'Administration italienne avait mis en œuvre un vaste programme de mise en valeur et de colonisation. Dans le cadre de ce programme, elle a créé un certain nombre d'industries, sous forme, notamment, d'entreprises de construction, de transports, d'usines travaillant les produits du bois et d'usines de métallurgie légère. Ces entreprises utilisaient surtout des matières premières importées. L'Etat favorisait l'agriculture et l'élevage. Les banques accordaient d'importantes facilités de crédit à l'agriculture, à l'industrie et aux entreprises de construction. Les capitaux privés s'orientaient de préférence vers les affaires industrielles et commerciales. Le programme avait été conçu, en premier lieu, dans l'intérêt des Italiens ; il n'en a pas moins contribué à élever le niveau de vie des indigènes qui participaient, à des degrés différents et selon leur condition particulière, à la prospérité générale.

L'activité économique du pays a été complètement bouleversée par la guerre, l'effondrement du système d'autarcie économique du gouvernement fasciste et l'interruption des relations avec l'Italie. [les entreprises commerciales, agricoles et industrielles se sont trouvées, faute de subventions importantes, dans l'impossibilité de maintenir leur ancien rythme de production. L'Administration militaire britannique s'est efforcée d'imprimer à l'activité économique une orientation nouvelle et de la maintenir à son niveau de développement, tout en la soumettant aux lois normales de la concurrence. Cette politique a été compromise par les difficultés monétaires et d'autres restrictions] (1). [D'autre part, l'Administration militaire britannique, qui pratique une politique strictement conservatrice, a renoncé à financer le développement économique de la Tripolitaine au moyen de larges subventions, rompant ainsi avec les méthodes suivies par le gouvernement italien. Les efforts de l'Administration britannique ont été entravés, même dans le cadre de cette politique conservatrice, par la réglementation du change et par d'autres difficultés qui sont analysées dans d'autres chapitres de ce rapport.] (2)

L'activité industrielle a repris sur une échelle très réduite. L'on s'est efforcé de protéger les entreprises contre la concurrence étrangère. Des dispositions ont été prises pour assurer le ravitaillement de la population ; les difficultés en ce domaine se sont trouvées encore aggravées par la sécheresse prolongée, qui a commencé en 1947, et qui continue à se faire sentir sur une grande étendue du territoire.

Beaucoup d'articles essentiels, y compris la presque totalité des produits manufacturés, qui ne peuvent être produits sur place, doivent être importés. Le volume des importations est très inférieur à celui d'avant-guerre ; depuis 1945, la valeur annuelle des exportations a considérablement augmenté. Il n'en demeure pas moins que la Tripolitaine a toujours eu une balance commerciale déficitaire ; en dépit du fait que, à deux reprises depuis le début de l'occupation, la balance commerciale se soit soldée par un excédent appréciable mais factice, le gouvernement britannique a été contraint, comme le gouvernement italien, de prendre à sa charge des déficits substantiels.

[Beaucoup de] (3) personnes se sont plaintes à la Commission que la séparation de la Tripolitaine de la Cyrénaïque et du Fezzan avait eu un effet défavorable sur le commerce, ces trois territoires constituant une entité économique, mais la Commission n'a pas déterminé si ces doléances reposaient sur des difficultés réelles, en dehors de celles qui résultent de la différence des systèmes monétaires. [Le commerce entre la Cyrénaïque et la Tripolitaine est peu important ; le commerce entre le Fezzan et la Tripolitaine a toujours été insignifiant.] (1)

---

(1) Texte des délégations des Etats-Unis, du Royaume-Uni et de l'U.R.S.S.

(2) Texte de la délégation de la France.

(3) Réserve de la délégation de la France qui précise que si les partis politiques ont exprimé, en termes généraux, les doléances de cet ordre, trois personnes seulement parmi toutes celles qui ont été entendues par la Commission se sont plaintes de la limitation du commerce avec le Fezzan et un très petit nombre d'individus de la limitation du commerce avec la Cyrénaïque.

L'incapacité du pays à faire face aux dépenses publiques à l'aide de ses propres ressources, même dans une phase de stagnation économique presque totale, est illustrée par le fait que quatre exercices budgétaires — sur six — ont été déficitaires. Les deux exercices qui se sont soldés par des excédents ont bénéficié des profits réalisés sur les exportations de grain, à la suite de deux bonnes récoltes.

L'expérience a montré qu'il n'est pas de bonne politique d'opérer, en temps normal, des prélèvements sur les stocks de grain du territoire ; il serait donc imprudent d'envisager que toute année de bonne récolte se traduira, dans l'avenir, par un budget ou une balance commerciale excédentaire. Il faut, au contraire, escompter des déficits dans les années de sécheresse, lorsqu'il sera nécessaire d'importer des produits alimentaires. [Ces conditions persisteront jusqu'à ce que les investissements aient augmenté d'une façon décisive le potentiel économique du pays.] (2)

Conclusions

La richesse du pays repose, en majeure partie, sur sa production agricole et pastorale. Actuellement, le territoire n'est pas en mesure de pourvoir à ses besoins les plus élémentaires sauf, dans les bonnes années, pour ce qui concerne les produits alimentaires de base.

Les sécheresses périodiques compromettent les récoltes, qui dépendent des pluies, et provoquent une grande mortalité du bétail ; il est alors nécessaire de recourir à une aide extérieure pour éviter la famine. L'on peut augmenter la production du sol, mais un accroissement considérable exigerait des investissements importants. (Voir section III, chapitre 1er.) D'autre part, la coopération [d'une large communauté] (7) d'Italiens est nécessaire, si l'on veut développer la production ou même la maintenir à son niveau actuel.

Un concours financier de l'étranger est également nécessaire si l'on veut réduire le déséquilibre qu'a entraîné la désorganisation économique provoquée par l'interruption des relations avec l'Italie. Pour reprendre la politique d'avant-guerre et s'attacher à nouveau au développement économique et à l'élévation du niveau social du pays, il faudrait recourir pendant plusieurs années à un soutien financier encore plus large. Toutefois, rien ne permet de supposer que l'équilibre ne pourrait être établi si l'on réorganisait le système administratif et fiscal, et si l'on mettait en œuvre un programme continu de développement économique. C'est pourquoi l'avenir du territoire dépend de sa stabilité politique, de l'aide financière et technique de l'étranger, d'apports d'argent frais et de la coopération entre les indigènes et les Italiens.

III. — COMMERCE ET INDUSTRIE (3)

a) Commerce extérieur

Avant l'occupation, les deux caractéristiques principales du commerce extérieur du pays étaient le déficit constant de la balance commerciale et l'importance de la part italienne dans les importations et les exportations. Le solde des échanges avec l'Italie était largement favorable à celle-ci. L'importance du commerce avec l'Italie provenait de l'incorporation de la Tripolitaine dans le système autarcique de l'Italie métropolitaine ; celle-ci consacrait des sommes considérables à renflouer l'économie déficitaire du territoire. [Plus de la moitié des importations en provenance d'Italie consistait en matériel d'équipement et contribuait au développement progressif du capital national.] (4).

Il faut noter cependant que même avant 1934, c'est-à-dire avant l'époque où l'Italie s'est engagée dans une politique d'autarcie, elle participait pour environ 2/3 au commerce extérieur de la Tripolitaine [ceci en raison de la proximité géographique et des frais peu élevés des transports maritimes] (5).

Pendant l'occupation britannique, la marge entre les importations et les exportations a été réduite [considérablement] (6). Les bilans de 1944 et de 1946, années de bonnes récoltes, ont été excédentaires, surtout en raison des exportations d'orge. La diminution du déficit de la balance commerciale est due principalement à la réduction des importations, notamment dans le domaine des produits d'équipement.

La prospérité du pays dépend de l'agriculture et de l'élevage, le nombre des industries locales étant insignifiant. Ces dernières sont surtout des entreprises de transformation des produits locaux.

Faute de matières premières et d'industries, les habitants dépendent des importations en ce qui concerne le thé, le sucre, le café, la farine, les textiles, l'habillement, et les produits manufacturés de toute espèce.

En outre, l'économie du territoire dans son ensemble exige que l'on importe du matériel de construction, du ciment, des voitures automobiles, des pièces détachées, l'outillage nécessaire aux services publics, des bicyclettes, des pneus, des chambres à air, du charbon, du pétrole, de l'huile, des lubrifiants, ainsi que du goudron et du bitume pour l'entretien des routes. Le gros du commerce d'exportation et d'importation est entre les mains de quelques commerçants de Tripoli et du Consorzio Agrario ; le Consorzio Agrario est une société commerciale ouverte à tous les agriculteurs et dont, sous le régime italien, les concessionnaires faisaient obligatoirement partie. Ce groupement a été soumis et demeure soumis au contrôle d'un commissaire nommé par le gouvernement.

1. — Sous l'administration italienne

Les importations en provenance d'Italie jouissaient d'un tarif préférentiel mais, jusqu'à 1934, le commerce extérieur était entièrement libre en ce qui concerne les marchandises non monopolisées ; le 4 octobre 1934, un décret royal a étendu à la Tripolitaine les restrictions monétaires en vigueur en Italie. Ces restrictions interdisaient notamment toutes les transactions en devises étrangères et en lettres de change, à l'exception de celles que nécessitaient les besoins de l'industrie et du commerce. A partir du 1er octobre 1936, le Gouvernement italien a assumé un contrôle absolu sur le commerce extérieur. Ce contrôle, de même que les sanctions appliquées par la Société des Nations en 1935, ont eu pour effet d'augmenter encore la part déjà considérable de l'Italie dans le commerce extérieur tripolitain.

---

(1) Addition de la délégation de la France.

(2) Addition de la délégation de la France.

(3) Ce chapitre a été considérablement allégé. Certaines des remarques particulières faites par l'une ou l'autre délégation, n'ont pas été maintenues ici.

(4) Addition de la délégation de la France.

(5) Addition des délégations de la France et de l'U.R.S.S.

(6) Addition de la délégation du Royaume-Uni.

(7) Réserve de la délégation des Etats-Unis.

Les principaux produits qu'exportait la Tripolitaine, étaient le blé, le thon, l'orge, la laine brute, les cuirs et les peaux, les dattes, les éponges, les légumes, les fruits et l'alfa. Jusqu'en 1939, le sel a fait l'objet d'exportations importantes, mais les expéditions ont cessé à cette époque.

2. — Sous l'administration militaire britannique

Toutes les importations et toutes les exportations sont soumises à un régime de licences.

Importations

C'est le Gouvernement britannique qui procure les devises nécessaires au règlement des importations. En vue de réduire les sorties de devises fortes, la politique officielle est de passer les commandes autant que possible dans la zone sterling. Les dollars, ou autres devises, sont délivrés aux importateurs à condition que l'Administration militaire britannique estime que leurs commandes ont un intérêt essentiel. Les marchandises importées contre des dollars ou d'autres devises fortes comprennent du charbon, des filins de coton, du malt, du fourrage, des pièces détachées, des cotonnades, des céréales, de la soude caustique et du fer blanc.

Actuellement les importations ne sont autorisées que dans les limites d'un programme approuvé par le Gouvernement britannique. Un quota et une valeur maximum sont alloués à chaque groupe de marchandises.

En 1947, la part des pays de la zone sterling dans le commerce extérieur de la Tripolitaine dépassait les 66 %.

Les échanges entre la Tripolitaine et l'Italie se font sur la base d'un accord de réciprocité et portent sur des produits d'une valeur globale de 350.000 livres sterling. La valeur des marchandises importées d'Italie, aux termes de cet arrangement, atteint 70.877.129 M. A. L. tandis que la valeur des marchandises exportées en Italie est de 53.870.809 M. A. L. L'instabilité de la lire italienne est un obstacle à la conclusion de nouveaux accords.

Les principales marchandises importées sont les filins de coton, les cotonnades, le thé, le charbon, le blé, le sucre, les huiles minérales, la farine, les produits chimiques y compris les engrais, la soie artificielle (fil et tissus). Le volume des importations n'est pas aussi grand qu'avant l'occupation.

Exportations

La politique de l'Administration militaire britannique a été d'exporter tous les excédents disponibles et d'accroître la production des marchandises faciles à écouler sur les marchés mondiaux. Cependant toutes les ventes à l'étranger, sauf celles effectuées dans les pays à monnaie forte, devant être réglées en livres sterling, les exportateurs tripolitains sont souvent contraints de chercher des débouchés à l'intérieur de la zone sterling où il leur est difficile de concurrencer des commerçants établis depuis longtemps. Selon l'Administration militaire britannique, la Tripolitaine produit des marchandises d'exportation d'une valeur appréciable, susceptibles de trouver dans d'autres circonstances des débouchés avantageux.

Depuis le début de 1947, il est absolument interdit d'exporter ou de réexpédier les produits suivants : céréales, farine, café, thé, sucre, dattes d'origine locale, olives, huile d'olive, arachides, huile de graines de coton et articles fabriqués à l'aide de ces matières premières.

Les principaux produits exportés sont : l'orge, le thon, le bétail, les cuirs et les peaux, les dattes, le blé, les légumes et les fruits frais, l'alfa, les éponges et le tabac. Le tabac a été exporté à nouveau en quantités appréciables, grâce à la récolte exceptionnelle de 1946.

A l'exception de certains Juifs, les indigènes n'ont pas l'expérience du commerce avec l'extérieur, sauf pour ce qui concerne des transactions relativement réduites avec les territoires voisins. Une procédure simplifiée a été instituée pour les échanges avec la Cyrénaïque, qui forme une union douanière avec la Tripolitaine et avec la Tunisie. De nombreux indigènes, selon l'Administration militaire britannique, tirent parti de cette procédure simplifiée. Bien que la Tripolitaine soit en union douanière avec la Cyrénaïque, le régime des licences et la différence des monnaies (M. A. L. en Tripolitaine, livres égyptiennes en Cyrénaïque) compliquent les relations commerciales des deux territoires. L'irrégularité des communications maritimes avec la Cyrénaïque et la Tunisie a provoqué des doléances. Le commerce avec ces deux pays en est, dit-on, entravé de ce fait.

[En plus des restrictions au commerce extérieur indiquées ci-dessus, il convient de mentionner le monopole de fait dont bénéficient les Sociétés Mitchell Cotts et C°. (Moyen Orient) Ltd, Standard Oil C°. Ltd., et Shell (Mer Rouge) Ltd.] (1). A l'heure actuelle le transport des marchandises entre la Tripolitaine et la Cyrénaïque se fait dans une large mesure par camions ; selon la Chambre de Commerce le prix du carburant a décuplé depuis 1939, ce qui a pour effet d'accroître le coût des produits transportés.

b) Commerce intérieur

Le commerce intérieur du pays est principalement entre les mains de petits détaillants qui tiennent des boutiques ou des éventaires sur les marchés. Les boutiquiers sont en majorité des Juifs et les étalagistes, pour la plupart, des Arabes des villes. En 1939, l'on comptait en Tripolitaine 8.969 commerçants patentés dont 1.278 étaient Italiens, 5.755 Arabes, 1.714 Juifs et 222 étrangers. Il n'y a pas d'autres données statistiques concernant le commerce intérieur avant l'occupation. A en croire une publication officielle italienne, il y avait 1.046 firmes commerciales italiennes en Tripolitaine en 1940, et leur capital global s'élevait à 309.310.000 lires.

Avant l'occupation, il existait une très forte activité commerciale qui s'est prolongée pendant quelque temps au cours de la période suivante ; néanmoins, la réduction des garnisons et le ralentissement des travaux d'intérêt militaire ont entraîné une contraction des affaires. Cette contraction était d'ailleurs inévitable du fait de l'abandon de la politique de larges subventions au commerce, à l'industrie et à l'agriculture, qu'avait pratiqué l'Italie. La situation est devenue encore pire à la suite des années de sécheresse 1947 et 1948. Les chiffres font défaut pour porter un jugement précis sur le commerce intérieur. L'Administration Militaire Britannique a soumis au contrôle les prix de tous les produits dont le marché n'est pas suffisamment pourvu, que ces produits soient importés ou d'origine locale. Toute personne possédant en excédent de ses besoins des produits considérés comme essentiels à la consommation, doit le déclarer à l'Administration Militaire Britannique ; elle ne peut en disposer sans une autorisation officielle. Le fourrage, les céréales comestibles et les farines ne peuvent être transportées sans autorisation préalable de l'Administration.

---

(1) Addition de la délégation de l'U.R.S.S.

Réserve de la délégation du Royaume-Uni qui souligne que l'Administration militaire britannique n'a accordé aucun monopole ni aucune concession spéciale à ces sociétés.

Tous les produits alimentaires de base sont rationnés. Les patentes sont délivrées par l'Administration Militaire Britannique.

c) Industrie

Il n'existe pas de grosses entreprises industrielles dans le pays, mais la distillation de l'alcool, la production du tabac, du sel, du vin, de la bière, la minoterie, le tannage, la fabrication des conserves, du savon, du papier, de la glace, des tuiles et briques sont des industries importantes sur le plan local. En outre, des artisans locaux s'emploient à la fabrication de tapis originaux, de couvertures de laine et de rayonne, d'objets d'art en argent et d'ustensiles ménagers en métal ordinaire.

Au cours de l'occupation, l'Administration Militaire Britannique a suivi une politique d'encouragement aux industries locales.

A présent les industries suivantes sont en activité :

Industrie du savon

Il y a vingt-sept manufactures de savon. On se sert, pour la fabrication de ce produit, de graisses végétales et animales produites sur place et de soude caustique importée du Royaume-Uni, d'Italie, de Malaisie et d'ailleurs. La capacité de production de ces manufactures est de 1.000 tonnes par mois ; à l'heure actuelle, la production n'excède pas 88 tonnes. La plupart de ces entreprises appartiennent à des Arabes et à des Juifs. Les exportations se font surtout en direction de la Cyrénaïque. Seize des manufactures existantes ont été construites depuis le début de l'occupation britannique.

Fabrication de différents types de boissons

Il existe deux distilleries d'alcool, une brasserie, dix-huit petites distilleries fabriquant la « bukha », boisson alcoolique locale tirée des dattes, dix-sept établissements produisant des pseudo-liqueurs et une usine de jus de fruits.

La capacité de production des distilleries d'alcool est de 65.000 litres par mois, mais ce chiffre est très loin d'être atteint à l'heure actuelle. Ces installations existaient déjà avant l'occupation. Elles utilisent des matières premières locales et exportent une partie de leur production vers la Cyrénaïque. La brasserie peut produire 490.000 litres par mois, mais sa production actuelle ne dépasse pas 165.000 litres. Elle importe les matières premières dont elle a besoin, à savoir le malt, la levure de bière et le houblon. Elle exporte en Cyrénaïque une partie de sa production. Depuis le début de l'occupation britannique on n'a construit que deux distilleries de bukha dont la capacité de production s'élève à 182.500 litres par mois. Leur fabrication actuelle ne dépasse cependant pas 38.000 litres. Une certaine quantité de bukha est exportée en Cyrénaïque.

Conserves de poisson

Il existe treize usines de conserves de poisson dans le pays, dont sept produisent des conserves de sardines à l'huile d'olive. Elles utilisent, comme matières premières, de l'huile d'olive et du sel d'origine locale ainsi que du fer blanc, importé principalement du Commonwealth britannique. Les exportations se font en direction de l'Italie, de Chypre, de Malte, de la Somalie et de la Cyrénaïque.

Les six autres usines font de la conserve de thon et utilisent les mêmes matières premières que les usines de conserves de sardines. Leur production annuelle s'élève à environ 200 à 300 tonnes de conserves de poisson à l'huile. Elles exportent en direction de l'Italie et de Malte ; avant la guerre, les pays consommateurs étaient les Etats scandinaves et l'Angleterre.

Fabrication d'huiles végétales

Il y a cinq huileries : quatre produisent de l'huile d'olive et une de l'huile de ricin.

Les usines produisant de l'huile d'olive ont une capacité d'environ 1.400 tonnes par mois, mais leur production est loin d'atteindre actuellement ce chiffre. On évalue à 2.000 tonnes la production annuelle d'huile d'olive en Tripolitaine.

L'huile de ricin est extraite du ricin produit dans le pays. L'usine a été construite par une entreprise italienne en 1937 ; elle a une capacité de production de 350 tonnes par mois, mais ne fabrique à présent que 50 tonnes. Elle exporte en direction de l'Italie et de l'Egypte.

Parmi les autres industries, il faut mentionner la fabrication de matériaux de construction qui occupe sept usines, la production de sel, l'industrie du cuir et du papier qui sont d'une importance secondaire.

Ces diverses branches d'industries comprennent au total 108 entreprises disposant d'installations mécaniques. Il n'a pas été possible de déterminer le capital exact de ces entreprises. La presque totalité du capital est entre les mains de cent sociétés. Il existe, en outre, 2.004 entreprises d'importance secondaire employant moins de six personnes. Elles se rattachent à 117 professions, notamment celles de tisserand, tailleur, coiffeur, etc.

Des concessions industrielles ont été accordées à diverses sociétés, notamment en ce qui concerne les transports, l'exploitation du natron et le commerce des produits pétroliers.

L'activité de l'industrie était généralement liée au vaste programme de développement économique entrepris avant la guerre. A présent cette activité se trouve ralentie du fait de la restriction des débouchés, de l'élévation du coût de production et de la pénurie des matières premières. Le marché intérieur s'est resserré à la suite du départ des Italiens et des troupes et en raison de la diminution du pouvoir d'achat de la population. Les ventes à l'étranger sont restreintes par une série de considérations déjà exposées dans ce chapitre ; elles souffrent également de la qualité médiocre de certaines fabrications locales. Les coûts de production sont plus ou moins affectés par le prix élevé du charbon, du mazout et des transports.

IV. — TRANSPORTS ET COMMUNICATIONS (1)

Routes

Avant l'occupation de la Tripolitaine par l'Italie il n'existait que des pistes de terre battue et des pistes empruntées par les chameaux. Après l'arrivée des Italiens un vaste programme de constructions routières a été entrepris. De 1913 à 1936 une somme de 130.855.000 lires a été affectée à la construction des routes de Tripolitaine. De 1936 à 1942 ces dépenses se sont élevées à 87.765.000 lires pour l'ensemble de la Libye. A la fin de l'année 1942 le réseau routier construit par les Italiens en Libye était constitué ainsi :

Routes principales à grande circulation	2.368 Km.
Routes macadamisées	454 Km.
Autres routes (non empierrées)	7.478 Km.
Total	10.300 Km.

En février 1944, l'Administration militaire britannique a pris à sa charge le soin, qui avait incombé jusqu'alors à l'armée britannique, d'entretenir le réseau routier de Tripolitaine ; celui-ci avait été endommagé au cours de la guerre.

Avant l'occupation britannique, le parc automobile de la Tripolitaine ne comprenait que 5.666 véhicules et 610 remorques. En 1947, il ne comprenait plus que 1.812 voitures automobiles dont 1.177 seulement avaient l'autorisation de circuler. Le nombre des remorques s'élevait, à la même époque à 194. La diminution du nombre des voitures automobiles dans le pays est due, aux réquisitions pratiquées par les armées des belligérants (selon le Consorzio Agrario), à l'usure normale du matériel et au fait qu'il n'est pas possible de le renouveler. En outre, un certain nombre de camions lourds qui n'étaient pas nécessaires sur place a été exporté en Italie.

Chemins de fer

Les Italiens, dès le début de leur occupation ont entrepris de construire des chemins de fer ; ils y ont consacré de 1912 à 1936 une somme de 22.100.000 lires. De 1936 à 1942, ils ont engagé une somme de 8.250.000 lires à la construction des chemins de fer dans l'ensemble de la Libye.

En 1939 le réseau ferroviaire était long de 226 kilomètres.

A présent le réseau ferroviaire comporte les kilométrages suivants :

Tripoli - Zouara	120 Km.
Bivio - Azizia	38 Km.
Tripoli - Tagiura	21 Km.
Docks de Tripoli	4 Km.
Salines de Mellaha	3 Km.
Suani - Castel Benito	11 Km.
	197 Km.

L'Administration militaire britannique exploite les chemins de fer depuis le 1er avril 1946. Auparavant cette tâche avait été assurée par l'armée britannique.

Ports

Les ports de la Tripolitaine pouvant recevoir des bateaux de gros tonnages sont les suivants :

1. — Le port de Tripoli

Le port de Tripoli est protégé par deux jetées — construites par les Italiens — longues respectivement de 1,25 et 3 milles. Il a été gravement endommagé au cours de la guerre. Des épaves de navires en ont obstrué l'entrée. On procède à l'heure actuelle au renflouement des bateaux coulés; quelques entrepôts ont déjà été reconstruits. En 1934, dernière année pour laquelle il existe des statistiques officielles, le port a reçu 712 navires représentant un tonnage net de 1.891.888 tonnes. Les chiffres correspondants pour 1947 ont été respectivement de 601 bateaux et de 445.129 tonnes.

2. — Le port de Zouara

Les travaux de construction de ce port relativement peu important, situé à 70 milles à l'ouest de Tripoli, ont commencé en 1924 et n'étaient pas entièrement terminés au début des hostilités.

Il existe, en outre, huit petits ports de pêche le long de la côte de la Tripolitaine.

Transports aériens

Avant l'occupation de la Tripolitaine, il existait quatre aérodromes (Mellaha, Castel Benito, Sorman, et Bugerra) et trois terrains de fortune (Bugherra, Zouara et Nalut). En 1940, un service aérien régulier fonctionnait huit fois par semaine entre Tripoli et Rome. Un autre service tri-hebdomadaire reliait Rome à Tripoli et à Addis Abeba. A l'heure actuelle, seuls les aérodromes de Castel Benito et de Mellaha demeurent en service. Les Alliés ont augmenté leur superficie et amélioré leurs installations pour permettre aux avions modernes de les utiliser. Ces deux aérodromes sont dotés de dispositifs permettant l'atterrissage sans visibilité. Castel Benito est une base de la Royal Air Force, tandis que Mellaha est au service de l'aviation militaire des Etats-Unis. Il existe à Marble Arch un terrain d'atterrissage de fortune construit par les Allemands pendant la guerre. L'aérodrome de Castel Benito est ouvert à tous les avions civils et est utilisé chaque semaine par des appareils de lignes régulières à savoir par 66 avions britanniques, 7 belges, 3 italiens, 2 français, 1 suédois et 2 hollandais.

V. — ORDRE PUBLIC (1)

Sous le gouvernement italien, trois corps différents étaient chargés de la police du territoire, sauf dans les territoires militaires du sud où la police était faite par l'armée. Les effectifs comprenaient 1.200 Libyens environ et quelque 2.000 Italiens.

Sous l'occupation actuelle la police tripolitaine a été organisée de la même façon que les forces de police mis ciale britannique. Elle comprend actuellement 1 721 membres dont 1 491 Libyens, 160 Italiens et 70 officiers ou inspecteurs britanniques.

---

(1) Les renseignements dont il est fait état dans ce chapitre ont été fournis par l'Administration militaire britannique et par le Comité Représentatif Italien. Nous ne reproduisons ici que l'essentiel du rapport.

(1) Nous n'avons maintenu ici que l'essentiel du chapitre original.

Un seul incident grave s'est produit depuis le début de l'occupation britannique : il s'agit des troubles anti-juifs du 5 novembre 1945. L'émeute a éclaté dans la vieille ville de Tripoli pour s'étendre par la suite à six centres provinciaux. L'ordre a été rétabli le 7 novembre 1945 :

Pertes	*Juifs*	*Arabes*	*Italiens*
Tués	124	5	1
Blessés	284	48	3

856 personnes ont été arrêtées et deux Arabes ont été condamnés à mort et exécutés. Selon des estimations officielles plus de 10.000 livres sterling de dommages ont été causés aux biens immobiliers ; les pertes en marchandises et en heures de travail atteignent sans doute un montant 50 ou même 100 fois supérieur. 1.000 Juifs au moins ont été privés de logement. Il s'est avéré que certains éléments de la police libyenne n'étaient guère sûrs ; les troupes britanniques ont dû intervenir pour rétablir l'ordre. Depuis ces événements les relations entre Juifs et Arabes demeurent précaires ; selon l'Administration militaire britannique, le meurtre d'un Arabe par un Juif le 3 mars 1947 a failli donner lieu à une lutte de caractère racial.

Le 17 février 1948, le Président et le Secrétaire du Bloc national libre ont été arrêtés pour s'être immiscés dans l'élection des représentants qui devaient comparaître devant la Commission. Leurs partisans se sont livrés à une violente manifestation devant le siège de l'Administration militaire britannique et ont refusé de se disperser. La troupe est intervenue et l'ordre a été rétabli au bout de quatre heures. Il y eût quelques tués et de nombreux blessés.

VI — PARTIS POLITIQUES ET AUTRES ORGANISATIONS (1)

Il existe actuellement six partis politiques libyens en Tripolitaine :

Le Parti nationaliste ;
Le Front National Uni ;
Le Bloc National Libre ;
Le Parti de l'Union Egypto-Tripolitaine ;
Le Parti Travailliste ;
Le Parti Libéral.

Les quatre premiers ont été formés et reconnus en 1946 par l'Administration militaire britannique. Les autres ont commencé à fonctionner en 1947, et leur importance est beaucoup moins grande. Il existe en outre le Conseil National pour la libération de la Lybie, composé d'exilés de la Tripolitaine ; son siège se trouve au Caire.

Tous les partis politiques ont le même programme en ce qui concerne l'avenir de la Tripolitaine, c'est-à-dire la complète indépendance, l'union de la Tripolitaine, de la Cyrénaïque et du Fezzan et l'adhésion à la Ligue arabe. Les partis ont remis à la Commission un mémorandum commun qui explique en détail ce programme. Le parti de l'Union Egypto-Tripolitaine se prononce en faveur de la réunion de la Libye et de l'Egypte sous la souveraineté de la couronne égyptienne, tandis que le parti libéral soutient l'Emirat de Sayyid Mohamed Idris el Senoussi. Tous les partis à l'exception du parti Travailliste, qui est d'une importance secondaire, soutiennent le Conseil National pour la libération de la Libye; celui-ci fonctionne dans une certaine mesure comme un organisme central, destiné à promouvoir les buts communs. Les partis politiques ont manifesté des sentiments amicaux envers les Italiens habitant la Tripolitaine ; ils ont déclaré qu'ils leur reconnaîtraient, une fois l'indépendance acquise, des droits absolument égaux à ceux des Libyens. Ce sont les rivalités des chefs des partis et les divergences d'opinions quant à la forme du futur Etat qui ont constitué l'obstacle majeur à la fusion des partis.

Les partis politiques n'ont pas une structure démocratique et ils ne s'adonnent à aucune activité sociale ou culturelle dans le pays. Ils n'embrassent pas la masse de la population, surtout hors de la ville de Tripoli ; en règle générale, les gens n'ont pas une notion claire de tout ce qu'impliquent les programmes des partis. Les chefs du Front National appartiennent le plus souvent à des familles connues ; ce sont des gens riches, des marchands ou des chefs religieux. Selon l'Administration militaire britannique la plupart d'entre eux ont collaboré avec l'Administration italienne.

Selon l'Administration militaire britannique, tous les partis tendent à exagérer le nombre de leurs adhérents et partent du point de vue qu'ayant gagné les suffrages d'un notable, ils ont acquis en même temps les voix de tous les habitants d'une région. L'Administration militaire britannique est d'avis que plus de la moitié de la population ne suit aucun parti politique.

Les chefs de toutes les organisations sont influencés par la Ligue arabe ; d'après l'Administration militaire britannique, le Parti de l'Union Egypto-Tripolitaine a reçu des sommes d'argent de la Ligue arabe et du Gouvernement Egyptien, et le Conseil National pour la libération de la Libye en a reçu de la Ligue. Le Front National Unifié, le Parti de l'Union Egypto-Tripolitaine et le parti libéral sont entrés en contact avec l'Emir Sayyid Mohamed Idris el Senoussi, mais les deux premiers groupements n'ont pas réussi à s'entendre avec lui (2).

Un journal arabe du Caire a publié un avis du Comité de la Fetwa et de l'Université d'El-Azhar, d'après lequel toute personne qui se prononcerait pour une puissance européenne ne serait plus un musulman authentique ; cet avis a certainement incité les gens à soutenir le programme des partis. [Il se peut aussi que les gens aient été influencés par les égards que les fonctionnaires de l'Administration militaire britannique ont eus pour le Conseil National pour la libération de la Libye] (3). [Les gens ont dû être influencés par la considération témoignée par les fonctionnaires de l'Administration militaire britannique au Conseil National pour la libération de la Libye] (4).

Les représentants du Conseil National pour la libération de la Libye, bien que Tripolitains de naissance, n'ont pas, à une seule exception près, résidé dans le pays depuis de longues années, ayant quitté celui-ci en raison de l'occupation italienne et ne s'y étant pas réinstallés après le départ des Italiens. Le chef de ce Conseil National, Bechir Bey Saadaoui, avait été pendant les douze dernières années le conseiller du roi Ibn Seoud. [Un certain nombre de chefs des sections locales des partis politiques ont vécu longtemps à l'étranger notamment en Egypte et ne sont arrivés dans le pays que récemment ; la population ne les connaît pas] (1). [Un certain nombre de chefs de sections locales de partis politiques ont vécu longtemps à l'étranger et ne sont arrivés que récemment dans le pays] (2).

---

(1) Dans ce chapitre, donné ici sous une forme réduite, seules les considérations d'ordre général ont été maintenues.

(2) Addition de la délégation de la France.

(3) Texte des délégations des Etats-Unis et de la France.

(4) Texte de la délégation de l'U.R.S.S.

A l'exception du Bloc national libre l'activité des organisations libyennes n'a été soumise à aucune restriction de la part de l'Administration militaire britannique, dans la mesure où elles ont observé les lois. [Certains de leurs dirigeants occupent des situations administratives officielles] (3). Il convient de noter que des membres du Conseil National pour la libération de la Libye sont arrivés à Tripoli le 4 mars 1948, c'est-à-dire trois jours avant l'arrivée de la Commission ; ils ont organisé des réunions publiques locales et se sont déplacés librement à travers le territoire. [Le Consul général d'Egypte à Bengazi est arrivé en Tripolitaine à peu près à la même époque et a visité certains centres dans ce territoire. Il a assisté à une réunion publique organisée par le Conseil] (4).

L'Administration militaire britannique a refusé d'autoriser en septembre 1947 la formation d'une Association d'anciens combattants de la Libye. La raison donnée par l'Administration militaire britannique à la Commission est que la personne, qui avait sollicité l'autorisation, avait été le bras droit du marquis Graziani de Neghelli et qu'elle avait été mêlée de si près aux excès du régime fasciste qu'elle aurait été inacceptable pour la majorité des Libyens et qu'une association formée sous son égide risquait de provoquer de graves désordres. Néanmoins l'association a été autorisée a fonctionner sous un autre président dans la Province orientale. Pendant son séjour dans le territoire, la Commission a reçu plusieurs déclarations, selon lesquelles un certain nombre des chefs locaux d'anciens combattants avait été arrêté par les autorités locales, afin de les empêcher de paraître devant la Commission. Selon les documents fournis par l'Administration militaire britannique, ces allégations n'étaient pas fondées.

La suite de ce chapitre consiste en brefs commentaires sur chaque organisation.

Il est probable que les Juifs qui ont fait cause commune avec les partis politiques arabes et se sont ralliés à leur programme concernant l'avenir du territoire, l'ont fait dans l'espoir sans doute de se ménager ainsi un certain degré de sécurité.

Organisations italiennes

Bien qu'il y ait un grand nombre d'Italiens en Tripolitaine, dont la moitié habite Tripoli, il n'existe que deux organisations politiques dans le pays. Ce sont le Comité Représentatif Italien et l'Association pour le Progrès de la Libye. Le premier, constitué initialement le 26 novembre 1947 en tant qu'organisation apolitique, a été autorisé le 13 février 1948 ; la seconde a été autorisée le 14 février 1948. Dans une lettre adressée à la Commission le 22 mars 1948, le Comité Représentatif Italien souligne que jusqu'à ces derniers mois l'Administration militaire britannique interdisait aux Italiens toute activité politique.

Le Comité Représentatif italien a déclaré que sa création n'ayant précédé que de vingt jours l'arrivée de la Commission, il n'avait pu faire participer à son activité l'ensemble de la Communauté italienne. Il affirme avoir plus de 15.000 adhérents. D'après l'Administration militaire britannique, le Comité Représentatif Italien représente 90 % de la Communauté italienne. Il est en faveur d'une tutelle italienne sur la Libye. Il affirme que les éléments pro-italiens de la population ont été désavantagés dans l'expression de leurs vœux et que la procédure suivie par la Commission n'a pas permis à cette dernière de s'assurer des aspirations véritables des habitants.

L'Association pour le Progrès de la Libye est présidée par un Italien qui est le Président du Conseil Consultatif Italien près l'Officier des affaires civiles de la province de Tripoli. Le parti a cinquante-six membres et peu d'influence. Il est en faveur d'une Libye qui comprendrait la Tripolitaine, la Cyrénaïque et le Fezzan, et accéderait à l'indépendance après une courte période durant laquelle les forces des Nations Unies assureraient l'ordre et la sécurité dans le pays. A défaut d'indépendance, c'est l'Italie qui devrait être chargée de l'administration du pays.

Il existe aussi une communauté maltaise et une communauté grecque. Elles ont peu d'importance. La première souhaite une tutelle britannique, la seconde désire l'indépendance du pays.

VII. — VŒUX DE LA POPULATION

Texte des délégations des Etats-Unis, de la France et du Royaume-Uni

Introduction

En préparant l'enquête de la Commission, l'administration locale avait escompté que la Commission suivrait la procédure qui avait été adoptée dans les territoires déjà visités, c'est-à-dire, que ses méthodes d'enquête comporteraient l'audition de représentants ; en conséquence, elle avait donné des instructions pour que les diverses tribus choisissent des porte-parole. Elle n'avait pas, toutefois, prescrit la procédure détaillée selon laquelle ces porte-parole seraient choisis.

La Commission s'est divisée sur le point de savoir si cette procédure devait être maintenue. Le 28 mars 1948, le communiqué suivant a été publié et la note suivante a été adressée à l'administration :

---

(1) Texte de la délégation de l'U.R.S.S.

(2) Texte de la délégation de la France.

(3) Addition de la délégation de l'U.R.S.S.

(4) Réserve des délégations des Etats-Unis et de la France.

COMMUNIQUÉ

La Commission commencera son enquête dans les provinces le 29 mars 1949. Elle entendra les habitants individuellement et en groupe. Elle décidera des lieux où elle se rendra et désignera elle-même les individus et les groupes auxquels elle donnera audience. Les gens qu'elle entendra ne devront pas avoir été désignés ou choisis à l'avance par quiconque. Ceux qui désirent se faire entendre devront en faire la demande immédiatement au centre administratif le plus proche.

Note à l'Administration militaire britannique

Les autorités administratives voudront bien aviser tous les pétitionnaires de l'itinéraire et de l'horaire de la Commission. Ces avis ne seront communiqués que dans les délais nécessaires, pour permettre aux intéressés d'être présents lors du passage de la Commission. Il sera indiqué très clairement aux habitants que la Commission ne s'engage pas à entendre tous les pétitionnaires, ni à respecter strictement l'itinéraire prévu.

En vue de s'assurer de toutes les nuances de l'opinion dans l'ensemble du pays dans les délais très brefs qui lui étaient impartis, la Commission s'est divisée en plusieurs groupes qui ont enquêté simultanément dans plusieurs régions. Des listes de questions portant sur les conditions politiques, économiques et sociales ont été préparées à l'avance et remises aux groupes d'enquête.

Les divers groupes d'enquête ont procédé de la même manière (sous réserve de légères différences qui sont exposées dans le paragraphe suivant). Dans l'ensemble, la Commission a interrogé 1.000 personnes environ dont plus de la moitié étaient des pétitionnaires, les autres étant des individus choisis au hasard dans la population.

Les principales différences entre les méthodes d'enquête suivies par les uns et par les autres sont les suivantes :

a) Dans deux groupes d'enquête, les représentants de deux délégations ont considéré comme pétitionnaires, non seulement les personnes qui avaient déposé des demandes d'audience selon les termes du communiqué, mais également les gens qui s'étaient assemblés au voisinage des lieux d'audition et qui, d'après les autorités locales, manifestaient le désir d'être interrogés.

b) Dans les mêmes groupes d'enquête, les représentants des deux autres délégations n'ont pas accepté qu'il soit tenu compte des déclarations de ceux des Cheikhs et des notables qui n'avaient pas déposé une demande d'audience, conformément aux termes du communiqué. Les représentants de ces deux délégations ont fait observer que de nombreux cheikhs et notables figuraient déjà sur les listes de pétitionnaires et que la commission, si elle en entendait d'autres, consacrerait une trop grande partie de son temps à recueillir les opinions d'une minorité. Aussi bien, de nombreux individus entrant dans cette catégorie n'ont été entendus que pour courtoisie et il ne demeure pas de traces de leurs audiences dans les archives.

La Commission s'est rendue compte, dans la première partie de son itinéraire que le communiqué n'avait pas, faute de temps, atteint les communautés les plus écartées. Il en est résulté que les pétitionnaires ont été le plus souvent, au cours des premières audiences, des individus qui avaient été choisis comme représentants en vertu des instructions initiales de l'administration.

De nombreuses pétitions écrites ont été reçues, notamment dans les derniers jours de l'enquête. La majorité de ces pétitions a été en faveur de l'indépendance et, à défaut de cette solution, d'une tutelle italienne. La Commission n'a pas tenu compte de ces pétitions en élaborant ce chapitre, car elle n'avait pas été en mesure de vérifier leur authenticité.

La délégation soviétique ayant refusé d'aller à Beni Oulid, trois délégations seulement s'y sont rendues. L'enquête à laquelle les trois délégations ont procédé dans ce centre a fait l'objet d'un compte-rendu ; toutefois, il n'en a pas été tenu compte dans la préparation de ce chapitre.

Degré de maturité politique de la population

Le degré de maturité politique varie d'une classe de la population à une autre. Il existe une classe relativement restreinte qui s'est montrée capable de comprendre les implications de ses demandes. Il existe aussi une large section de la population qui, tout en énonçant un point ou un autre du programme des partis, en réponse à la question de base, s'est avérée incapable de fournir toute indication supplémentaire. Enfin, un groupe relativement peu nombreux entend rien ou peu de chose aux genres de gouvernement. En général, ceux qui appartiennent à ce dernier groupe, sont uniquement préoccupés d'assurer leur subsistance et n'attachent pas d'importance au point de savoir quel gouvernement les y aidera.

La Commission a reçu la copie d'un tract indiquant les réponses à donner aux questions portant sur l'avenir du pays. Les destinataires de ces tracts devaient inviter la Commission à s'adresser aux partis politiques, si celle-ci jugeait que les réponses faites aux questions de base appelaient des explications complémentaires. La Commission n'a pas été en mesure de mesurer l'étendue de la diffusion donnée à ce tract. Le porte-parole du Front national uni a expliqué qu'il avait été distribué pour aider les gens à faire connaître leur point de vue.

Etant donné ce qui précède, il va de soi que la propagande politique devait être particulièrement efficace auprès des nombreux éléments de la population qui sont dépourvus d'idées claires en ce qui concerne l'avenir du pays et qui s'en remettent aux personnes plus éduquées du soin de formuler et de justifier leurs vœux. Les visées nationalistes avaient été énoncées depuis plusieurs années ; au cours des dernières semaines, elles ont fait l'objet d'une propagande intensive de la part du Conseil national pour la libération de la Libye. Ce Comité est arrivé du Caire à Tripoli deux jours avant la Commission et a entrepris immédiatement une large tournée dans le pays. Des informations à son sujet sont données dans le chapitre 3 de la Section II, de ce rapport. Il a fait, au cours de sa tournée, le procès du colonialisme en général et de l'administration italienne en particulier. Il a en outre expliqué aux gens les réponses qu'ils devraient donner à la Commission si celle-ci leur posait des questions. Le Comité a précédé la Commission dans presque tous les centres de population principaux. La Commission a toutefois interrogé des habitants dans des endroits qui ne figuraient pas sur l'itinéraire du Comité.

Il est difficile de savoir dans quelle mesure la tournée du Conseil national pour la libération de la Libye a pu influencer les opinions qui ont été exprimées à la Commission. [Aucune différence notable n'est apparue entre les vœux des gens qui avaient assisté aux réunions du Comité et ceux de personnes résidant dans des endroits où le Comité ne s'était pas rendu et qui, parfois, n'avaient jamais entendu parler du Comité ou de ses chefs] (1). [Tous les endroits où la Commission s'est rendue se trouvaient à proximité immédiate des centres où le Conseil national pour la libération de la Libye avait tenu ses réunions. La Commission a observé que même les personnes qui n'avaient pas assisté aux réunions du Comité national pour la libération de la Libye avaient subi l'influence de sa propagande] (1).

---

(1) Texte des délégations des Etats-Unis et du Royaume-Uni.

Vœux des habitants

La demande d'indépendance est très répandue dans toutes les régions et parmi toutes les classes de la population. Presque tous ceux qui ont demandé l'indépendance ont précisé, lorsque la question leur a été posée, qu'ils souhaitaient que l'indépendance leur fût accordée immédiatement.

[La plupart des gens ont demandé, en plus de l'indépendance, soit l'adhésion à la Ligue arabe, soit l'unité de la Libye. Plus de la moitié de ceux qui se sont prononcés pour l'indépendance ont énoncé les trois revendications] (2).

[Environ la moitié des personnes interrogées par la Commission a demandé l'adhésion à la Ligue arabe : plus d'un tiers a demandé l'unité de la Libye] (3).

La notion d'indépendance varie selon le degré de maturité politique des habitants et selon leur situation sociale. Les gens aisés qui, le plus souvent, sont également ceux dont la conscience politique est la plus développée et qui figurent souvent parmi les pétitionnaires, connaissaient généralement les trois points du programme des partis politiques.

Les éléments pauvres de la population, qui sont aussi les plus nombreux, ont montré dans l'ensemble qu'ils comprenaient moins bien le problème et qu'ils y prenaient moins d'intérêt. Une [large] (4) majorité d'entre eux a demandé l'indépendance, beaucoup ajoutant qu'ils espéraient, de cette manière, obtenir une amélioration des conditions de vie actuelle. Un nombre considérable d'entre eux a demandé que la Ligue arabe leur vint en aide, tandis qu'un nombre [beaucoup] (5) plus restreint demandait l'unité de la Libye. Les autres accepteraient tout gouvernement qui leur donnerait du travail, des vivres et des vêtements.

La plupart des habitants auxquels l'on a demandé quelle forme de gouvernement ils souhaitaient avoir dans l'avenir, ont répondu, soit que cette question devrait être réglée une fois que l'indépendance serait acquise, soit qu'il appartenait aux partis politiques d'en décider. La grande majorité de ceux qui ont été interrogés par la Commission au sujet de leurs sentiments à l'égard du Senoussi lui ont été défavorables.

En règle générale, les rares individus israélites qui ont été questionnés ne se sont pas prononcés pour un gouvernement arabe et ont requis la protection d'un gouvernement étranger.

Tous les Italiens qui ont été interrogés se sont prononcés pour le retour de l'administration italienne, la plupart d'entre eux ajoutant qu'ils quitteraient le territoire si celui-ci devenait indépendant.

Il y a un sentiment d'opposition très répandu à l'encontre des administrations étrangères, et beaucoup de gens ont demandé que le régime actuel [militaire et temporaire] (6) prenne fin sans délai. [La grande majorité de ceux auxquels la question a été posée se sont prononcés contre le retour de l'administration italienne, certains déclarant qu'ils en viendraient aux armes si une telle éventualité se réalisait. D'autres ont indiqué que leur opposition ne les conduirait pas à une telle extrémité] (7). [Un nombre insignifiant d'individus ont déclaré qu'ils en viendraient aux armes si l'administration italienne était restaurée. D'autres ont émis l'idée que les opposants n'en viendraient pas à une pareille extrémité] (8). Certains, sans revendiquer le rétablissement de l'administration italienne, se sont montrés disposés à l'accepter. Une minorité, qui ne représente pas un nombre considérable de gens, a émis le vœu que les Italiens reviennent. Dans la plupart des endroits où la question a été posée, les habitants ont reconnu que les relations existant entre les Arabes et les Italiens, sur le plan local, étaient cordiales.

Justification des vœux exprimés

Les principales raisons invoquées par les partisans de l'indépendance ont été les suivantes :

a) L'on ne peut accepter d'administration étrangère car l'indépendance est un droit naturel pour tous les hommes.

b) L'on ne peut se prononcer pour un gouvernement qui ne soit pas musulman, car cela est contraire aux enseignements de l'Islam.

c) Le pays est capable de se suffire à lui-même.

d) Certains aspects de la colonisation italienne ont provoqué des ressentiments.

e) Certains éprouvent du mécontentement à l'égard du régime actuel, du fait que les mesures prises pour parer aux difficultés économiques du moment se sont avérées insuffisantes.

Ceux qui se sont prononcés contre l'idée d'indépendance considéraient que le pays était incapable de se gouverner lui-même. En outre, certains Berbères se sont montrés hostiles à une administration arabe.

Ceux qui ont pris parti pour la Ligue arabe étaient en général animés par l'idée que tous les Arabes sont frères et considéraient que, par conséquent, l'indépendance et l'affiliation à la Ligue arabe étaient deux notions inséparables. Certains accordaient à la Ligue arabe une signification religieuse et voyaient en elle le symbole de l'unité musulmane. D'autres espéraient que la Ligue arabe pourvoirait à tous leurs besoins matériels.

Les partisans de l'unité de la Libye, dans les rares cas où ils ont tenté de justifier leurs désirs, ont invoqué des arguments d'ordre économique et ont déclaré que l'unification était nécessaire pour permettre au pays de se suffire à lui-même. Ceux qui souhaitent le retour des Italiens rappellent volontiers que les conditions économiques étaient meilleures autrefois et que l'administration italienne leur venait en aide dans les temps difficiles. Certains, parmi les anciens combattants, étaient inspirés en outre par le désir de toucher les sommes qu'ils avaient gagnées en servant dans l'armée italienne.

---

(1) Texte de la délégation de la France.
(2) Texte des délégations des Etats-Unis et du Royaume-Uni.
(3) Texte de la délégation de la France.
(4) Réserve de la délégation de la France.
(5) Addition de la délégation de la France.
(6) Réserve de la délégation de la France.
(7) Texte des délégations des Etats-Unis et du Royaume-Uni.
(8) Texte de la délégation de la France.

Texte de la délégation de l'U.R.S.S.

a) Conditions dans lesquelles la Commission a effectué son enquête

Au cours de son séjour en Tripolitaine, la Commission des quatre puissances a donné audience aux organisations politiques et aux habitants de la ville de Tripoli; du 29 mars au 7 avril, elle a parcouru le territoire, recueillant les vues des populations des provinces.

La Commission a reçu de nombreuses pétitions et des lettres personnelles, dont certaines n'étaient pas signées, émanant d'habitants de la Tripolitaine. En général, les lettres anonymes étaient accompagnées d'une note indiquant que leurs auteurs s'étaient abstenus délibérément d'apposer leurs signatures, redoutant qu'une expression sincère de leur opinion n'entraîne pour eux des représailles et des conséquences fâcheuses.

Au mois de février 1948, avant l'arrivée de la Commission, l'administrateur en chef avait proclamé l'état d'alerte à la suite d'une manifestation antibritannique, et les manifestations à caractère politique avaient été interdites pendant la durée des travaux de la Commission. Non seulement l'hôtel « Del Mehari », où séjournaient les membres de la Commission, mais encore les bâtiments où celle-ci tenait ses séances, furent placés sous la garde de la police. Un poste de police était installé à l'entrée du bâtiment, et tous ceux qui désiraient parler aux membres de la Commission devaient faire connaître leur identité. Ces faits ont naturellement limité les contacts entre la Commission et la population.

Les restrictions administratives auxquelles se trouvaient soumises les activités des organisations, des groupes et des individus favorables à l'Italie, sont un autre aspect caractéristique de la situation existant en Tripolitaine. En revanche, les éléments nationalistes arabes, organisations, partis et groupes, dont certains sont d'origine étrangère, comme le Conseil national pour la libération de la Libye, bénéficièrent d'une liberté d'action totale et purent organiser des réunions publiques, recouvrir les murs de violentes formules de propagande et se déplacer librement dans tout le territoire, etc...

Un certain nombre de protestations furent reçues à ce sujet. On ne peut les négliger, car elles indiquent bien l'état d'esprit de la population au moment de l'enquête de la Commission.

L'intervention de hautes autorités religieuses musulmanes d'Egypte (le Comité de la Fetoua et la Faculté de théologie de l'Université El Azhar, du Caire) a introduit dans les travaux de la Commission un élément entièrement nouveau, qui ne s'était pas manifesté dans les deux colonies précédentes. Ces autorités religieuses ont publié des proclamations incitant la population à voter pour l'indépendance, l'unité et l'affiliation à la Ligue arabe, et menaçant d'excommunication ceux qui ne se conformeraient pas à leurs mots d'ordre. Ces proclamations ont été répandues par les journaux locaux en langue arabe; ceux-ci sont publiés par les Services d'informations britanniques. Etant donné que la population de la Tripolitaine est dans sa majorité musulmane et que les masses sont, dans l'ensemble, illettrées, les proclamations de ces chefs religieux ont eu un retentissement considérable et ont influencé les vues que les habitants ont exprimées à la Commission.

L'on ne peut non plus passer sous silence les activités des émigrés libyens qui se trouvaient en exil au temps de l'administration italienne, principalement dans les pays arabes et notamment en Egypte, et qui ont regagné leur territoire après le début de l'occupation britannique. Ces personnes, qui détiennent souvent en Tripolitaine des fonctions administratives importantes, se sont fait les interprètes de violents sentiments pan-arabes. Il faut noter aussi que les interprètes au service de l'Administration militaire britannique sont originaires de pays arabe.

L'influence que ces gens ont eue sur l'opinion tripolitaine, en ce qui concerne l'avenir du pays, ne saurait être négligée lorsque l'on porte un jugement d'ensemble sur la situation.

En Tripolitaine comme en Somalie italienne, la Commission a constaté, dans un certain nombre de cas, que la crainte des représailles prévenait une liberté d'expression franche et entière. A en croire diverses lettres et déclarations, plusieurs représentants locaux de l'Administration (mudirs, interprètes, fonctionnaires arabes de la police, etc...), ainsi que des notables, des cheikhs et des personnes appartenant aux familles les plus en vue, ont intimidé la population, proférant des menaces contre ceux qui exprimeraient des sentiments pro-italiens. La Commission a constaté que des mudirs et des cheikhs distribuaient des cartes de rationnement à ceux qui s'engageaient à se prononcer contre le retour de l'Italie, et refusaient d'en distribuer aux autres.

La Tripolitaine se trouve dans une situation économique difficile, spécialement depuis la sécheresse de 1947. Les difficultés économiques pèsent particulièrement sur les populations des villages. Celles-ci ne peuvent subsister qu'à l'aide des produits rationnés que distribue l'administration. La Commission a reçu des lettres à ce sujet, soulignant que l'administration avait acheté de l'orge dans le pays au prix de 6 lires d'occupation par kilo et avait revendu l'orge d'une qualité inférieure au prix de 15,5 lires d'occupation. Le fléchissement du commerce et de l'industrie, qui s'est accentué après 1947, le chômage, l'élévation rapide du prix des produits essentiels, tous ces facteurs ont réduit les populations des villes à un état de pénurie accentuée; elles ne peuvent subsister qu'à l'aide de produits rationnés. Ces circonstances ont, elles aussi, réagi sur l'état de l'opinion au moment où la Commission procédait à son enquête.

Au cours de la tournée qu'elle a effectuée dans le pays pour s'assurer des vœux de la population, la Commission a généralement été précédée par le Conseil national pour la libération de la Libye; cet organisme a tenu des réunions aux endroits mêmes où la Commission avait projeté de se rendre pour consulter les habitants. Au cours de ces réunions, des discours ont été prononcés en faveur de l'indépendance, de l'unité et de l'affiliation à la Ligue arabe, et la population a été informée de la manière dont elle devait répondre aux questions de la Commission. Il convient de souligner que l'itinéraire de la Commission n'avait reçu aucune publicité et n'était connu que des membres des délégations et de l'Administration militaire britannique.

Il n'est pas douteux que l'activité du Conseil national pour la libération de la Libye, et les réunions publiques tenues par ce Comité, ont influencé la population dans l'expression de ses vues devant la Commission.

b) Vœux de la population

1° La majorité des personnes que la Commission a interrogées se sont prononcées en faveur de l'indépendance du pays, de l'unité de la Libye et de l'affiliation à la Ligue arabe.

2° En ce qui concerne les moyens d'accéder à l'indépendance, des divergences d'opinions se sont manifestées ; beaucoup des habitants interrogés par la Commission ont demandé que l'indépendance leur fût accordée sans délai. La plupart d'entre eux confondaient la notion d'indépendance avec une élévation de salaire. Pour ce qui est de la Ligue arabe, les gens qui ont été interrogés à ce sujet ignoraient ce qu'elle était et où elle siégeait.

Le reste de la population a exprimé l'avis que le pays n'est pas mûr pour l'indépendance et qu'il ne pourrait y accéder qu'au terme d'une période transitoire de préparation, sous la direction d'une puissance européenne. Cette partie de la population a déclaré que le pays le mieux qualifié pour entreprendre cette tâche serait l'Italie, parce que la population libyenne connaît les Italiens et ce qu'ils ont réalisé en Libye.

3° La population, à l'unanimité, a demandé aux grandes puissances de régler le problème de l'avenir de la Libye aussi rapidement que possible, le régime actuel étant intolérable.

4° Les Italiens réfugiés dans les camps d'Italie qui ont été interrogés par la Commission ont demandé aux grandes puissances de confier à l'Italie une tutelle sur ses anciennes colonies, et de leur permettre de regagner leurs anciennes résidences. La plupart d'entre eux y sont nés et ils comptent, par leur travail et par la prospérité qu'ils apporteront à ces territoires, faciliter l'accession des indigènes à l'indépendance totale.

Remarque des délégations des Etats-Unis, de la France et du Royaume-Uni sur le texte de la délégation de l'U.R.S.S.

La délégation de l'U.R.S.S. a refusé de discuter le projet de chapitre soumis à la Commission ; celle-ci n'a donc pas étudié ce texte. Selon les trois autres délégations, ce projet ne présente pas, à bien des égards, un tableau exact des faits.

Remarque de la délégation de l'U.R.S.S. sur le texte des délégations des Etats-Unis, de la France et du Royaume-Uni

La délégation de l'U.R.S.S. n'a pas pu accepter le projet de chapitre relatif aux « vœux de la population », présenté par les délégations des Etats-Unis, de la France et du Royaume-Uni, les délégations de la France et du Royaume-Uni n'ayant pas tenu compte, en rédigeant ce texte, d'une série de documents comprenant plus de 450 lettres, auxquelles ont apposé leur signature ou leur empreinte digitale plus de 15.500 Tripolitains qui, selon leurs propres déclarations, ont envoyé ces lettres au nom de 450.000 habitants de la Tripolitaine. On peut juger du caractère de ces lettres d'après celles qui ont été placées en annexe au présent rapport, à la demande de la délégation de l'U.R.S.S.

La délégation de l'U.R.S.S. n'ayant donc pas été en mesure de discuter le projet de chapitre des délégations de la France et du Royaume-Uni, a présenté son propre texte.

CONCLUSIONS GENERALES

Depuis le début de l'occupation italienne, la population de la Tripolitaine est devenue en partie une population citadine. Sa structure tribale, conforme à la tradition arabe, a été ébranlée, sauf pour ce qui concerne les éléments de la population entièrement nomade qui représente moins du 1/10^e de la population totale ; toutefois, une certaine forme d'organisation tribale reposant sur des fractions beaucoup plus petites existe encore. Environ 90 % des musulmans sont illettrés. L'influence de la religion est forte. [Tous les habitants, à l'exception de ceux qui habitent dans les villes, ont l'habitude de s'en remettre aux cheikhs, aux notables et aux chefs religieux dans toutes les matières mettant en jeu les intérêts collectifs de la communauté] (1). La masse des habitants ne comprend les problèmes politiques, sociaux et économiques que dans la mesure où ils affectent des situations locales ou touchent un des sujets d'ordre religieux.

Seuls, ceux des musulmans qui jouissent d'une autorité spéciale auprès de leurs coréligionnaires, ou qui sont capables d'acquérir une telle autorité, subissent directement l'influence des partis politiques et sont capables de comprendre le but de ces derniers. [Ce sont eux qui propagent les idées des partis, et celles-ci sont acceptées en général à des degrés divers par toutes les fractions du groupe tribal] (2). [Ils s'efforcent de répandre leurs idées et y parviennent plus ou moins] (3).

[Ainsi, à l'exceptoin d'une petite minorité dont la Commission n'a pas été en mesure d'évaluer l'importance, toute la population indigène musulmane [a accepté dans ses grandes lignes le programme des partis] (4), [a subi l'influence des mots d'ordre des partis] (5), demande l'indépendance complète et immédiate, [le plus souvent en se trompant sur le sens des mots] (6). [L'unité de la Libye et son adhésion ultérieure à la Ligue arabe sont également souhaitées par de larges couches de la population, bien que ce vœu n'ait pas été exprimé avec la même vigueur. Le sentiment politique musulman, intensifié par l'influence de la religion, est si fort que l'opposition aux revendications nationalistes et les opinions pro-italiennes se sont rarement manifestées.] (7)

[La Commission n'a pas été en mesure de constater jusqu'à quel point la masse des indigènes s'est véritablement ralliée au programme des partis. Les gens qui ont été interrogés ont souvent demandé l'indépendance immédiate, bien que les classes pauvres, qui sont aussi les plus nombreuses, n'aient pas clairement compris le sens de cette revendication et l'aient exprimée sans grande conviction. Cette catégorie de gens se préoccupe essentiellement des difficultés économiques qui les assiègent et des moyens d'améliorer ces conditions de vie. L'adhésion à la Ligue arabe a été également mentionnée à de nombreuses reprises, tandis qu'une minorité seulement a demandé l'unité de la Libye. Les partis politiques n'ont joué des sentiments religieux musulmans que pour gagner des suffrages. Cette forme de propagande, ainsi que l'élection du Conseil national pour la libération de la Libye a, sans aucun doute, influencé la population dans l'expression de ses vues.] (1)

---

(1) Réserve de la délégation de la France.

(2) Texte des délégations du Royaume-Uni et des Etats-Unis.

(3) Texte de la délégation de la France.

(4) Version des délégations des Etats-Unis et du Royaume-Uni.

(5) Texte de la délégation de l'U.R.S.S.

(6) Addition de la délégation de l'U.R.S.S.

(7) Texte des délégations des Etats-Unis, du Royaume-Uni et de l'U.R.S.S.

La structure économique du territoire, qui est fondée essentiellement sur l'agriculture et l'élevage, se caractérise par l'incapacité où se trouve le pays d'assurer la satisfaction de ses besoins élémentaires à l'aide de ses propres ressources, sauf en ce qui concerne les produits de base servant à l'alimentation des indigènes. La situation économique actuelle du territoire est difficile ; toutefois, la capacité de production peut être accrue [comme en témoigne le rapide développement économique du pays sous l'administration italienne] (2). L'exploitation des possibilités existantes nécessiterait de larges investissements de capitaux. Le concours [d'une large communauté] (3) de colons italiens est souhaitable et une assistance financière et technique de l'étranger est nécessaire pour l'amélioration ou même le maintien des conditions actuelles.

A présent, le pays, s'il n'est pas suffisamment développé économiquement, n'est pas non plus mûr politiquement ou au point de vue culturel pour se gouverner lui-même. Bien qu'il existe dans le pays des éléments parmi lesquels des administrateurs pourraient être recrutés, ces éléments n'ont pas l'expérience suffisante pour fournir les cadres d'un gouvernement autonome, si ce n'est après une période d'apprentissage et d'expérience.

---

(1) Texte de la délégation de la France.
(2) Addition de la délégation de la France
(3) Réserve de la délégation des Etats-Unis.

LA CYRÉNAÏQUE

I. — POPULATION

Au point de vue ethnique, les habitants de la Cyrénaïque comprennent des Arabes, des Juifs et des immigrés européens. Actuellement, les Arabes constituent environ 98 % de la population.

Arabes

Les Arabes, qui sont tous musulmans, étaient au nombre de 245.952 en 1943 et de 304.437 en juin 1947 (1). On peut les diviser en ruraux (234.522) et en citadins (69.915). Les éléments ruraux sont socialement organisés en tribus et sont presque tous nomades. La plupart des citadins sont des ouvriers non spécialisés, les autres sont des artisans, des marchands, etc...

Juifs

La communauté juive comprend 4.380 membres, dont la presque totalité habite les villes de Benghazi (3.541), de Barce (446) et de Derna (330). Les Juifs s'occupent principalement de commerce en gros et en détail ; ils sont originaires du pays et parlent tous l'arabe.

Autres habitants

Les Grecs (185) et les Maltais (127) vivent pour la plupart à Benghazi, où ils sont trafiquants. Il y a, à l'heure actuelle, 182 Italiens en Cyrénaïque, dont 12 prêtres, 43 religieuses et 89 employés des compagnies de renflouage à Benghazi et à Tobrouk ; ils ne résident dans le pays qu'à titre provisoire. En 1941, il y avait en Cyrénaïque 43.077 étrangers, pour la plupart italiens. Ces derniers, à quelques exceptions près, ont quitté le pays pendant les hostilités, sur l'ordre des autorités militaires italiennes ou allemandes. D'après l'administrateur en chef, les anciens colons italiens n'ont pas été autorisés à rentrer en Cyrénaïque, principalement par souci de maintenir le *statu quo* existant au moment de l'occupation britannique. Il estime, en outre, que leur retour provoquerait vraisemblablement des désordres.

Il existe une petite communauté arménienne de 31 membres qui habitent Benghazi.

La population totale de la Cyrénaïque s'élève à 309.636 personnes.

II. — STRUCTURE ECONOMIQUE

La structure économique de la Cyrénaïque est relativement simple ; elle apparaît lorsqu'on met en regard ses ressources, d'une part, c'est-à-dire l'agriculture et l'élevage, et ses besoins, d'autre part. Dans quelle mesure les ressources du territoire peuvent-elles suffire à ses besoins essentiels ? Tel est le problème de l'équilibre économique de la Cyrénaïque.

Ressources naturelles

Le sol, le cheptel et, à titre secondaire, les forêts, les pêcheries et les mines, constituent les ressources naturelles du territoire.

Sur une superficie totale de 700.000 km2, 40.000 km2 seulement peuvent être considérés comme productifs ; 35 % environ de cette superficie productive, soit 14.000 km2, peuvent être placés parmi les terres arables ; la région des cultures sédentaires, dont la moitié a été défrichée, ne couvre que 150 km2. Elle est presqu'entièrement localisée entre Benghazi et Derna. Le reste ne convient qu'aux pâturages et aux cultures occasionnelles, auxquelles les nomades se livrent au gré des précipitations.

Les 660.000 km2 qui sont considérés comme n'étant pas productifs comprennent la grande région désertique qui s'étend sur 1.200 km. au sud de la ligne Agedabia-Bardia. Les précipitations y sont à peu près nulles, et environ 10.000 indigènes, répartis entre quatre groupes d'oasis éloignées, constituent toute sa population.

Le pays souffre de sécheresses périodiques. Celles-ci sont toutefois moins fréquentes et moins sévères qu'en Tripolitaine. Il n'existe pas de rivières ; en dehors des pluies, l'eau ne provient que de nappes souterraines, d'une capacité limitée et dont on ne tire parti que dans la zone littorale, le plateau du Djebel Akhdhar et les oasis éloignées.

Elevage

L'élevage constitue la principale activité économique et, en fait, l'unique ressource des communautés nomades et semi-nomades qui forment la majorité de la population. Le cheptel et les produits de l'élevage sont les éléments les plus importants du commerce extérieur. L'élevage se fait selon les méthodes d'une économie semi-nomade, et la mortalité du bétail est élevée quand surviennent des sécheresses. Le cheptel et les produits de l'élevage pourraient être améliorés en quantité et en qualité.

---

(1) Ces chiffres, comme ceux qui sont donnés ailleurs dans ce chapitre, sont basés sur le nombre des cartes d'alimentation en circulation et peuvent être exagérés. La rapide augmentation de population qu'ils indiquent peut s'expliquer par le retour de Cyrénéens de l'étranger, par l'immigration tripolitaine, en particulier au cours de la sécheresse de 1947, ainsi que par les effets conjugués des naissances et de fausses déclarations pour l'obtention des cartes d'alimentation.

Agriculture

L'agriculture revêt deux formes : les exploitations sédentaires des colons et les cultures de céréales pratiquées par les nomades au gré des précipitations.

L'exploitation sédentaire est le fait de nombreux petits fermiers arabes installés depuis longtemps le long la côte ; elle s'étend aussi aux zones de cultures qui avaient été réservées aux Italiens et que ceux-ci avaient mises partiellement en valeur; les Arabes de l'intérieur s'en tiennent, depuis toujours, à une sorte d'exploitation errante, au gré des pluies. La plus grande partie des terres qui sont régulièrement cultivées est exploitée à l'aide de l'eau du sous-sol, tandis que la culture du type nomade, de loin la plus répandue, dépend uniquement des précipitations. L'orge et le blé sont les principales céréales cultivées. On cultive également, surtout pour la consommation locale, des légumes et des fruits ; faute de renseignements précis, il n'est pas possible de mesurer la part des cultures maraîchères et fruitières dans l'économie du pays. Elles ont beaucoup souffert au cours de la guerre et par la suite.

Forêts, pêcheries et ressources minérales

Il n'existe pas de forêts proprement dites. Les régions boisées n'ont d'utilité économique que par l'usage qu'en font les habitants eux-mêmes, qui s'y fournissent notamment en bois de chauffage.

La pêche aux éponges pourrait se développer, mais l'exploitation en est actuellement organisée de telle manière qu'elle ne profite guère à l'Etat. Les autres formes de la pêche n'offrent que peu de ressources.

Les gisements miniers découverts jusqu'à présent n'ont pas une valeur considérable, bien que le sel soit d'une exploitation facile.

Population

La population s'élève à environ 300.000 habitants ; un quart d'entre eux résident habituellement dans les villes ; les autres sont, pour la plupart, des nomades. A présent, les Italiens ne participent plus à la vie économique du pays.

Besoins de la Cyrénaïque

Les besoins du pays doivent être appréciés en tenant compte des exigences des habitants, du degré de développement du territoire et de l'incertitude des exploitations agricoles dans la plus grande partie du territoire, du fait de l'irrégularité des pluies. Presque tous les produits manufacturés et les produits alimentaires, à l'exception des céréales et de la viande, doivent être importés. Si la pluie est rare ou inexistante, les céréales elles-mêmes doivent être importées.

Adaptation des ressources aux besoins

L'Administration italienne avait mis en œuvre un programme de développement économique intensif. De nombreux colons italiens avaient été intallés dans les meilleures terres arables, dans des fermes bien aménagées qu'ils exploitaient selon des méthodes scientifiques. Les voies de communication étaient en bon état et formaient un large réseau. Les services sociaux fonctionnaient bien et sur une vaste échelle. De nombreuses entreprises industrielles étaient en activité, mais elles dépendaient principalement des matières premières importées. Ces entreprises travaillaient essentiellement pour le marché intérieur. Elles participaient à la réalisation du programme de mise en valeur.

Le départ de toute la population italienne, qui s'élevait en 1941 à environ 40.000 âmes, la rupture de tous les liens économiques avec l'Italie et les destructions de la guerre ont complètement désorganisé la structure économique que les Italiens avaient donnée au pays. Les usines et les exploitations agricoles ont subi des dommages considérables. Les premières n'ont pas repris leur activité. L'Administration militaire britannique a pris en main elle-même l'exploitation de certaines fermes ; elle en a loué d'autres à des cultivateurs arabes qu'elle a aidés et qu'elle a soumis à un certain contrôle ; de cette manière, elle a pu maintenir en culture, tout au moins partiellement, la plus grande partie des anciennes exploitations. Dans l'ensemble, néanmoins, cette transformation s'est traduite par un abaissement marqué du niveau de l'agriculture et par une diminution considérable du rendement par rapport à celui qu'avaient obtenu les Italiens. L'on constate une régression économique constante et un retour aux méthodes ruineuses et rudimentaires qui étaient la règle avant l'occupation italienne. L'exportation des céréales a été encouragée ; elle a bénéficié de conditions climatériques généralement favorables.

Bien que les importations aient été réduites au strict nécessaire, la balance commerciale reste déficitaire en raison de la nécessité où se trouve le territoire d'importer pratiquement tous les produits essentiels autres que les produits alimentaires de base. Les déficits qui sont la rançon d'une économie déséquilibrée, ont été pris en charge par l'Administration italienne, puis par l'Administration britannique. Il n'est pas possible de comprimer les importations, si l'on veut maintenir le niveau de vie actuel. [Il faudrait même les augmenter, si l'on décidait de revenir à la politique de mise en valeur qui avait été suivie avant la guerre.] (1)

Les déficits de la balance commerciale ne pourront être réduits que si la production agricole se développe considérablement en vue de l'exportation, et si l'on améliore la qualité et la quantité du bétail et des produits de l'élevage.

Un tel effort est à peine concevable dans le cadre d'une économie purement arabe. [Une crise aiguë de main-d'œuvre qualifiée se fait sentir dans toutes les branches de l'agriculture ; elle entrave aussi la reprise de l'activité industrielle] (2). [Le pays ne possède pour ainsi dire pas de main-d'œuvre qualifiée] (3).

Il ressort de l'étude des budgets, que les recettes intérieures ne couvrent pas les dépenses courantes du gouvernement et les frais du service d'assistance sociale; le Gouvernement britannique, depuis le début de l'occupation du pays, a dû prendre à sa charge 25 % des dépenses totales, bien qu'il s'en tienne à une politique purement conservatoire.

---

(1) Addition de la délégation de la France.

(2) Texte des délégations des Etats-Unis, de la France et du Royaume-Uni.

(3) Texte de la délégation de l'U.R.S.S.

Il reste beaucoup à faire dans les domaines de la reconstruction et de la remise en valeur, notamment en ce qui concerne les services publics ; le pays n'est pas en mesure de financer lui-même les travaux indispensables.

Conclusions

La vie de la Cyrénaïque dépend presqu'entièrement de son agriculture et de son élevage. Le pays est à présent dans l'impossibilité de suffire pour l'essentiel à la plupart de ses besoins. Bien qu'il produise habituellement les céréales dont il a besoin, son ravitaillement est compromis dès que les pluies font défaut. L'agriculture et l'élevage pourraient être développés, à condition toutefois que l'étranger prête son concours. Même avec ce concours, le territoire n'a guère de chance de trouver son équilibre avant de nombreuses années.

III. — COMMERCE ET INDUSTRIE

a) Commerce extérieur

Les traits caractéristiques du commerce extérieur de la Cyrénaïque sous le régime italien était le déficit constant de la balance commerciale, qui avait pour contre-partie des investissements considérables, notamment dans le domaine des travaux publics, et la place primordiale de l'Italie dans le commerce d'importation et d'exportation.

Sous l'occupation, le déficit a été à peu près réduit. Les conditions climatériques ont été généralement bonnes depuis cinq ans et il en est résulté une production excédentaire du bétail (dont les Italiens prohibaient l'exportation), de laine, de peaux et de céréales. Les surplus ont été exportés.

En revanche, les importations ont été très réduites. [En particulier, les produits d'équipement économique, qui, en 1936, représentaient environ 50 % des importations, n'ont représenté que 10 % de celles-ci en 1946.] (1)

Les échanges avec l'Italie, qui en 1933 représentaient 68 % des importations et 86 % des exportations, et qui par la suite ont absorbé 90 % environ du commerce extérieur du pays, sont tombés à l'heure présente à un niveau insignifiant.

D'autre part, la part du Royaume-Uni dans le commerce d'importation est passée de moins de 1 % (entre 1931 et 1936) à 17 % (en 1947). La part de l'Egypte dans ce commerce est passée d'environ 2 % (de 1931 à 1936) à 25 % (en 1947). Jusqu'au mois de juillet 1947, l'Egypte faisait partie de la zone sterling.

L'agriculture et l'élevage constituent les deux richesses principales du pays, et la prospérité de la Cyrénaïque dépend de leur heureux développement. Il n'existe pratiquement pas d'industrie locale.

La production locale est suffisante en ce qui concerne les produits alimentaires de base, mais les habitants dépendent du marché extérieur pour le thé, le sucre, et toutes les marchandises manufacturées.

1. — Sous l'administration italienne

Selon les statistiques pour les années 1934-1936, qui sont les dernières disponibles, les principaux articles importés au temps des Italiens étaient les suivants : camions automobiles, produits pétroliers, farine de blé, explosifs, articles en métal, outillage, bétail, ciment, chaux, sucre, thé, cotonnades, textiles, vins, huile d'olive, chaussures et charbon.

Les règlements et restrictions concernant le commerce extérieur étaient les mêmes que ceux qui ont été indiqués dans le rapport sur la Tripolitaine.

Les principaux articles d'exportation étaient les suivants : blé, éponges brutes, laine, peaux, cuirs et sels.

• Il est à noter que tout en exportant du blé, la colonie importait de la farine.

Selon des indications de source italienne, il y avait en Cyrénaïque avant la guerre 637 entreprises privées italiennes, au capital global de 116.000.000 de lires.

2. — Sous l'administration militaire britannique

Dès le début de l'occupation britannique, les tarifs préférentiels ont été abolis. Des licences sont exigées pour toutes les importations et exportations, mais des facilités spéciales sont accordées pour les marchandises originaires de Tripolitaine et d'Egypte.

Les principaux produits importés sont les suivants : sucre, thé, cotonnades, tabac manufacturé, produits pétroliers, tissus de laine, huile de table, riz, pièces de rechange pour voitures automobiles, chaussures et articles de cuir.

Les marchandises sont importées dans la mesure du possible de la zone sterling. Le Gouvernement britannique met des devises étrangères à la disposition des commerçants pour l'achat des produits essentiels qu'il n'est pas possible d'obtenir dans les pays de la zone sterling. Parmi les marchandises importées des pays situés en dehors de la zone sterling, figurent : les céréales, les cotonnades, l'outillage et les pièces de rechange pour voitures automobiles, ainsi que le ciment.

Depuis 1947, toutes les importations sont soumises aux licences prescrites dans le programme d'approvisionnement du Gouvernement britannique ; les quotas sont établis compte tenu du degré de nécessité de chaque catégorie de marchandises, tel que l'Administration militaire britannique l'apprécie.

Dans le domaine des exportations, l'Administration militaire britannique encourage la vente à l'étranger des produits indigènes ; elle accorde facilement les licences d'exportation pour tous les articles dont la production est excédentaire, à l'exception des matières grasses et des céréales panifiables. Les matières grasses ne sont pas exportées, leur production ne suffisant pas à satisfaire les besoins locaux.

Dans les années de bonnes récoltes, l'excédent de la production d'orge est acheté publiquement par l'Administration à un prix fixe ; l'exportation en est faite sous le contrôle de l'« International Emergency Food Council » et du ministère britannique du Ravitaillement.

---

(1) Addition de la délégation de la France.

En 1947, les réexportations, y compris le matériel de guerre récupéré, se sont élevées à 536.507 livres sterling.

Le commerce extérieur est entre les mains de 60 marchands environ, dont la plupart résident à Benghazi. Tous sont Arabes ou Juifs, à l'exception d'une importante entreprise britannique et de plusieurs entreprises grecques.

La plus grande partie du commerce avec l'Egypte est entre les mains des marchands de Derna.

Le pays se trouve dans une situation favorable en ce qui concerne le commerce des moutons avec l'Egypte ; le Gouvernement égyptien autorise en effet, pour encourager ce commerce, le réemploi en marchandises égyptiennes de 50 % du produit des ventes.

Les éponges constituent une source virtuelle de revenut, mais en raison de l'absence de travailleurs libyens qualifiés, tant pour la pêche que pour le traitement des éponges, ce commerce se trouve entièrement entre les mains des ressortissants grecs. En 1946, les exportations des éponges se sont élevées à 57 tonnes, et en 1947 à 118 tonnes, mais le seul bénéfice que le pays retire actuellement de ce commerce résulte du paiement des taxes d'exportation sur les éponges ; celles-ci sont de 100 livres égyptiennes par tonne.

[En 1947, au moins les 3/4 des importations de la Cyrénaïque étaient en provenance de la zone sterling. La part de la Tripolitaine dans le commerce extérieur de la Cyrénaïque est environ de 16 %. Il n'existe pas d'échanges entre la Cyrénaïque et le Fezzan.] (1)

Toutes les devises étrangères provenant des exportations sont encaissées par la Trésorerie britannique.

A présent, il n'existe pas de Chambre de Commerce en Cyrénaïque. Le Cercle des Marchands s'acquitte de certaines des fonctions qui incomberaient normalement à la Chambre de Commerce.

Sous le Gouvernement italien, la Cyrénaïque était reliée à l'Italie par des services maritimes réguliers et fréquents. Il n'existe plus de liaisons maritimes régulières à l'heure actuelle, et la plupart des produits importés et exportés doivent être transbordés en Egypte et à Malte.

[Selon plusieurs marchands, un très fort trafic de contrebande se fait le long des frontières d'Egypte et de Tripolitaine.] (2)

b) Commerce intérieur

Le commerce intérieur du pays porte essentiellement sur le bétail, les céréales, la laine, les cuirs et peaux, ainsi que sur tous les produits qui sont essentiels à la vie des indigènes et qui doivent être importés ; les plus importants sont le thé, le sucre et les cotonnades. Les marchés se tiennent dans les principaux centres d'habitation.

Tous les groupes ethniques sont libres de s'adonner au commerce.

L'Administration ne contrôle que les produits importés essentiels, pour lesquels il existe un état de pénurie. Ces produits sont directement importés et répartis par l'Administration, par l'intermédiaire de grossistes et de détaillants choisis par elle selon un système de rationnement et à des prix contrôlés qui sont les mêmes dans tout le pays, quels que soient les frais de transport. Les rations alimentaires sont identiques pour tous, sans distinction d'âge, ni de sexe. Les cotonnades importées ne sont soumises qu'à un contrôle des prix.

c) Industries

Selon des renseignements de source italienne, il semble qu'il existait 334 entreprises industrielles privées italiennes, au capital de 306.670.000 lires, avant la guerre.

Selon l'Administration militaire britannique, les principaux établissements industriels étaient : une brasserie, une tannerie, une usine de tissage, une petite manufacture de savon, une manufacture de chaussures, une usine de conserves de thon, une saline et une compagnie minière pour l'extraction de la potasse. Il y avait également trois minoteries, des laiteries, des huileries, etc...

A l'exception des salines et de la mine de potasse, tous ces établissements industriels travaillaient principalement, semble-t-il, pour le marché intérieur. L'industrie de la potasse en était encore au stade expérimental.

Les troupes britanniques trouvèrent, à leur arrivée, la majeure partie des installations industrielles détruites ou endommagées.

Selon l'Administration militaire britannique, le personnel de maîtrise et les ouvriers, pour la plupart italiens, avait quitté le pays et toute la documentation relative aux activités des usines avait été détruite ou emportée.

Selon l'Administration militaire britannique, il s'est avéré impossible pendant la période d'administration provisoire, de remettre en état les usines partiellement endommagées ou de trouver des personnes acceptant de prendre la responsabilité de leur exploitation. En conséquence, à la demande du Centre des approvisionnements du Moyen Orient, une partie de l'outillage de la brasserie et de la tannerie a été vendue dans des pays voisins.

Selon des Italiens, la production des salines avait atteint 30.000 tonnes par an avant la guerre. Pendant l'occupation, il n'y a pas eu d'exportation de sel.

A l'heure actuelle, il n'existe pas d'entreprises industrielles dans le pays, en dehors de deux minoteries. [D'après le contrôleur du commerce et de l'industrie, les difficultés que l'on éprouve pour restaurer l'industrie cyrénéenne ne tiennent pas seulement au défaut d'outillage, mais aussi à l'absence presque complète de main-d'œuvre qualifiée.] (3).

Sous le régime italien, l'industrie artisanale locale comprenait des ateliers de tissage et des entreprises travaillant le cuir et le bois. Celles-ci continuent à travailler sous le régime actuel. Chaque entreprise artisanale emploie six ouvriers au maximum.

L'Administration italienne s'était efforcée de développer le tourisme. Une série d'hôtels modernes avait été créée sous la direction d'une compagnie semi-publique. Selon des indications de source italienne, le tourisme avait commencé à jouer un rôle assez important dans l'économie de la colonie vers 1939, il semble que les touristes aient été en majorité italiens.

En raison des conditions anormales actuelles, il n'a pas été possible de reprendre cette activité.

---

(1) Addition de la délégation de la France.
(2) Addition de la délégation de l'U.R.S.S.
(3) Addition des délégations de la France et de l'U.R.S.S.

IV. — TRANSPORTS ET COMMUNICATIONS (1)

Routes

Le rapport sur la Tripolitaine contient des informations au sujet du réseau routier de la Libye. La plus importante route de la Cyrénaïque est celle qui relie la Tripolitaine à l'Egypte. C'est une route macadamisée, à double trafic, d'une longueur de 934 km. Il existe une route de dérivation au sud de Barce ; elle rejoint la route principale du Nord à El Gubba. Elle a 150 km. de long. De nombreuses routes secondaires, empierrées mais non macadamisées, se détachent de ces deux artères principales ; elles desservent les colonies agricoles. Selon des renseignements de source italienne, une somme de 78.390.000 lires fut dépensée entre 1913 et 1936 pour la construction et l'entretien du réseau routier de la Cyrénaïque ; des sommes considérables furent également dépensées entre 1937 et 1942.

L'Administration militaire britannique se contente d'entretenir les routes existantes. Celles-ci se sont beaucoup détériorées, mais depuis 1944 on les remet systématiquement en état.

Transports routiers

Au temps des Italiens, des services d'autocars reliaient les agglomérations situées le long de la route principale. A présent, il existe un service d'autocars entre Benghazi et Derna.

Le Club des Marchands de Derna a déclaré que les frais de transport des marchandises entre Derna et Benghazi variaient actuellement de 2 à 2,5 livres égyptiennes par tonne. Les chiffres correspondants étaient de 100 et 120 lires.

Chemins de fer

Les chemins de fer de Cyrénaïque ont été construits sous le régime italien. Ils sont à voie unique et à faible écartement ; l'une des deux lignes existantes, celle de Benghazi à Barce, a 108 km. de long ; l'autre, celle qui relie Benghazi à Solouq est longue de 55 km. Selon des renseignements de source italienne, une somme totale de 62.121.000 lires a été dépensée de 1913 à 1936 pour la construction des voies ferrées.

Du début de l'occupation au mois d'août 1946, les chemins de fer ont été exploités par l'armée britannique. En mars 1948, ils ont été partiellement ouverts au trafic civil ; ils fonctionnent actuellement à une cadence réduite, sous la direction de l'Administration militaire britannique.

Ports et navigation maritime

Benghazi est le port principal du pays. Le vieux port manque de profondeur ; il est mal abrité contre le vent et la houle ; les Italiens ont dépensé des sommes considérables pour l'améliorer et le creuser. En 1926, on avait entrepris la construction d'un nouveau port. Celui-ci, situé au nord-est de l'ancien, était protégé par un môle de 1.600 mètres. Ce port devait abriter des navires de 26 mètres de tirant d'eau. La nappe d'eau aurait eu 170.000 m2. La construction du môle principal était terminée à la veille des hostilités.

Les autres ports du pays étaient Derna et Tobrouk.

Au cours de la guerre, le port de Benghazi a été mis presque complètement hors d'usage par la destruction du môle principal et du fait de l'encombrement de la rade par les navires coulés.

Il a été à nouveau partiellement utilisé par la Marine britannique en novembre 1942. Les autorités militaires britanniques l'administrent depuis novembre 1943 ; depuis cette dernière date, de nombreux travaux de réparation ont été effectués en vue de prévenir de nouvelles détériorations. Le port fonctionne à nouveau en partie.

Sous les Italiens, il existait des lignes maritimes régulières entre Benghazi et Derna. Elles ne fonctionnent plus à l'heure actuelle, et la plupart des navires transportant des marchandises importées ou exportées sont obligés de transborder leur cargaison en Egypte ou à Malte. Cependant, les occasions de transport par mer sont fréquentes. En 1947, 262 navires marchands ont accosté à Benghazi.

Transports aériens

La première ligne aérienne civile a été ouverte en Cyrénaïque en 1930. Elle reliait Tripoli à Benghazi. Ce service s'est ensuite développé, et avant la guerre il existait des liaisons aériennes fréquentes avec Tripoli, Tunis, l'Italie, l'Egypte, l'Erythrée et la Somalie.

Il y avait quatre aérodromes, deux bases d'hydravions et de nombreux terrains de fortune ; ils étaient exploités par l'aviation militaire italienne, mais ouverts au trafic civil sans distinction de nationalité.

Actuellement, il existe une liaison aérienne journalière avec Londres, *via* Malte, ainsi qu'avec Le Caire. Il y a également un service bi-mensuel pour Malte, *via* Tripoli.

Deux aérodromes sont exploités par la Royal Air Force ; ils demeurent ouverts à l'aviation civile.

V. — ORDRE PUBLIC

Les diverses formations italiennes chargées de la police du territoire avaient un effectif global de 1.150 Arabes et 250 Italiens. Les Britanniques utilisèrent au début la *Force Arabe de Libye* (2) comme force de police, mais ils durent bientôt la dissoudre car elle s'avéra vite inutilisable à cette fin.

---

(1) Quelques coupures ont été faites dans ce chapitre.

(2) On trouvera au chapitre suivant (partie c) des précisions sur la *Force Arabe de Libye*. Le présent chapitre est un résumé de l'original.

Une Force de Défense de la Cyrénaïque a été constituée pour remplir toutes les fonctions de la police dans le territoire. Sa tâche ne se limite pas uniquement aux obligations normales de la police, elle comprend également le contrôle des ports, la protection des forêts et la garde des prisons. Ses effectifs s'élèvent à 765 membres dont 716 Arabes et 29 Britanniques, Ces derniers étant tous officiers ou inspecteurs.

Il n'est pas interdit à la population rurale de porter des armes, pourvu qu'elle ait une licence, et la Commission a observé que beaucoup d'Arabes, en dehors des villes et particulièrement dans la partie orientale du territoire, étaient en possession de fusils.

Selon l'administration militaire britannique, l'ordre public n'a pas été gravement troublé au cours de l'occupation britannique, en dépit du fait que la population soit armée. Il y a eu cependant un nombre croissant d'atteintes à la loi. Selon d'autres sources, les assassinats pour des motifs non politiques se seraient multipliés depuis la fin de la guerre.

D'autre part, il y a eu un nombre peu élevé mais croissant d'incidents entre Arabes et Juifs au cours des dernières années. Toutefois, il n'y a pas eu d'émeutes anti-juives en Cyrénaïque.

VI. — PARTIS POLITIQUES ET AUTRES ORGANISATIONS

a) Congrès National (El Mutamar el Watani el Am)

La seule organisation politique en Cyrénaïque est le [soi-disant] (1) Congrès National, qui n'est pas un parti politique au sens ordinaire de ce terme. Il a remplacé le Front Uni, qui avait été jusqu'alors l'organisation politique principale du territoire qui professait des opinions similaires [bien que son attitude à l'égard de l'union avec la Tripolitaine ait été, selon l'administrateur en chef, encore plus intransigeante que celle du Congrès National] (2)* [bien que son attitude à l'égard de la Tripolitaine n'ait pas été clairement définie] (3). Il a été constitué le 10 janvier 1948, par l'Emir Sayyid Muhammed Idris el Senoussi, qui, selon l'Administration militaire britannique, avait proclamé de sa propre initiative, en décembre 1947, la dissolution de tous les partis et organisations politiques [afin de constituer un front uni] (4).

Le Congrès était composé, au début, de 67 membres nommés par l'Emir [et destinés à représenter les tribus et la population urbaine de toute la Cyrénaïque] (5). Leur nombre est passé actuellement à 71. Le Congrès prétend représenter les opinions de tous les habitants de la Cyrénaïque. Outre les 71 membres mentionnés ci-dessus, qui constituent le Congrès général de Benghazi, cette organisation affirme avoir 15 sections dans le pays.

Dès le début, son activité s'est concentrée sur la préparation d'un dossier destiné à être remis à la Commission des quatre puissances. [Le Congrès National a refusé de soumettre à la Commission les comptes rendus de ses séances] (6) [sous prétexte que quelques-uns de ses documents étaient secrets. Cependant, il n'a pas soumis à la Commission même ceux qui n'étaient pas secrets] (7). Son programme demande l'indépendance complète et immédiate de la Cyrénaïque ; un gouvernement constitutionnel sous la souveraineté de l'Emir et de ses héritiers, et le refus de toute coopération avec l'Italie ou les Italiens. Le Congrès a déclaré qu'il était en faveur de l'unité de la Libye, mais à deux conditions : d'abord, que le gouvernement de la Libye soit une monarchie héréditaire, placée sous l'autorité de l'Emir ; ensuite, que les Italiens ne soient, en aucun cas, autorisés à retourner en Cyrénaïque.

Le président et l'un des vice-présidents du Congrès National sont des proches parents de l'Emir. Le second vice-président fait également partie de la famille du Sénoussi. Le Congrès et ses sections se composent, en majeure partie, de Cheikhs et de notables. Le Congrès National est violemment anti-italien, un certain nombre de ses membres ayant lutté contre les Italiens avant l'occupation britannique. Plusieurs membres influents du Congrès occupent des situations importantes dans l'Administration militaire britannique. Certains d'entre eux avaient occupé également des situations dans les administrations italienne et turque. [Bien que le Congrès National ait déclaré avoir été constitué afin de faire connaître son programme à travers la Cyrénaïque, la Commission a constaté, au cours de ses enquêtes dans le pays, que le Congrès agissait souvent comme un organisme administratif donnant des instructions aux Mudirs ou aux Cheikhs par l'entremise de ses sections locales.] (8)

b) Communauté juive

Les Juifs habitent la Cyrénaïque depuis des temps immémoriaux. Leur communauté a été reconnue par le Gouvernement italien en 1931. Elle a pour but de représenter et de protéger les intérêts des Juifs, et de pourvoir à leurs besoins en ce qui concerne la religion, l'instruction et l'assistance sociale, ainsi que de contrôler les établissements juifs.

Le bureau central de la communauté se trouve à Benghazi. Il a des succursales à Barce et à Derna ; dans chaque ville, il a un Comité élu, avec un président et un vice-président. [Le vice-président pour Benghazi est un directeur de la Compagnie de récupération pour la région du désert, lié par contrat au ministère britannique de l'Approvisionnement, qui l'autorise à ramasser la ferraille récupérée sur les champs de bataille] (9). Il affirme que le nombre de ses membres s'élève à 4.500.

Le président a déclaré que la communauté était en faveur de l'indépendance de la Cyrénaïque, avec un gouvernement constitutionnel sous la souveraineté de l'Emir et de ses héritiers, et soutenait le Congrès National. [Il est probable que les vues exprimées par le président de la communauté étaient inspirées en partie par le désir de ne pas compromettre les relations précaires existant entre Juifs et Arabes] (1).

---

(1) Addition de la délégation de l'U.R.S.S.

(2) Texte des délégations de la France et de l'U.R.S.S.

* La délégation du Royaume-Uni fait remarquer que seul le rapport pour 1946 de l'Administrateur en chef fait mention de cette intransigeance.

(3) Texte des délégations des Etats-Unis et du Royaume-Uni.

(4) Réserve de la délégation de l'U.R.S.S.

(5) Réserve de la délégation de l'U.R.S.S.

(6) Addition des délégations de la France et de l'U.R.S.S.

(7) Addition de la délégation de l'U.R.S.S.

(8) Addition des délégations de la France et de l'U.R.S.S.

(9) Addition de la délégation de l'U.R.S.S.

c) Autres communautés

Il existe également une petite communauté grecque et une communauté arménienne. Le programme de la première vise à l'indépendance sous la souveraineté de l'Emir. La seconde est également partisane de cette indépendance, mais elle croit que la Cyrénaïque a besoin d'une longue période de formation politique sous l'égide d'une puissance étrangère.

d) Le club Omar Mukhtar

Cette organisation s'est constituée sous la forme d'un club sportif en avril 1943, avec des sections à Benghazi et dans d'autres centres urbains. Elle prétend compter 2.200 membres. Au cours des années 1946-1947, elle s'est de plus en plus occupée de politique, adoptant pour objectif une constitution démocratique comportant des garanties contre le despotisme senoussi. En décembre 1947, elle a mis fin à ses activités politiques, à la demande de l'Emir.

La section de Benghazi a refusé de comparaître devant la Commission et n'a fait aucune déclaration sur ses idées politiques. La section de Derna a présenté un mémorandum précisant qu'elle était en faveur de l'unité de la Libye, de l'indépendance complète sous la royauté de Sayyid Mohamed Idris el Senoussi et de l'affiliation à la Ligue arabe. Elle a ajouté que, le cas échéant, elle renoncerait à sa demande relative à l'unité de la Libye, plutôt que de cesser d'être fidèle à Sayyid Mohamed Idris el Senoussi.

e) Renseignements concernant l'Emir

Sayyid Mohamed Idris el Senoussi est né en 1890. Il est le descendant direct de Mohamed Ben Ali el Senoussi, un Algérien qui a fondé au milieu du siècle dernier une secte musulmane connue sous le nom de Senoussiya. Cette secte a obtenu son plus grand succès parmi la population de Cyrénaïque où elle compte encore à l'heure actuelle comme fidèles, environ 80 % des habitants du pays (la proportion en Tripolitaine est, sans doute, de 30 %). Le fondateur et ses héritiers sont devenus des chefs politico-religieux que l'Administration turque a, dans une certaine mesure, reconnus. Les Senoussi ont joué un rôle actif au côté des Turcs, lors de l'occupation italienne et pendant la première guerre mondiale. Sayyid Idris, chef de la famille Senoussi a été reconnu par le Gouvernement italien en 1920 comme Emir de la partie méridionale du territoire, avec titre d'Altesse. Après des négociations prolongées et infructueuses avec l'Italie, il a quitté le pays pour l'Egypte en 1923.

En 1940, un accord a été conclu entre Sayyid Idris et les autorités britanniques en Egypte et une force auxiliaire, dite force Arabe de Libye, a été formée avec l'aide de Sayyid Idris parmi les Cyrénéens se trouvant en Egypte. Sayyid Idris, et d'autres membres de la famille des Senoussi, ont reçu de l'Administration militaire britannique des subventions annuelles qui, selon des statistiques budgétaires, se sont élevées à un total de 72.637 livres sterling, au cours de la période allant du 11 novembre 1942 au 30 juin 1947. L'Emir a visité la Cyrénaïque par trois fois après la guerre et est rentré définitivement dans le pays, avec l'aide des autorités britanniques, à la fin de 1947. L'Administration militaire britannique a mis à sa disposition à Benghazi le palais qui était occupé précédemment par les gouverneurs italiens.

Dans le rapport de l'Administrateur en Chef pour l'année 1947, il est dit que la décision de l'Emir de se fixer de façon permanente dans le pays et l'application d'une politique d'entente plus étroite des Cyrénéens avec l'Administration, ont pour effet d'améliorer les conditions morales de vie et de renforcer les liens avec la Grande-Bretagne. Selon l'Administrateur en Chef actuel, l'Emir a été encouragé à revenir dans son pays et a été installé dans une résidence digne de lui parce que les autorités ont estimé pouvoir mettre à profit sa connaissance de la population et l'influence qu'il exerce sur elle. Il est souvent consulté par l'Administration sur les questions concernant les habitants et le pays.

[Selon le rapport annuel de l'Administrateur en Chef pour l'année 1945, l'Emir a demandé l'indépendance et une alliance avec un pays fort sur terre, sur mer et dans les airs ; il a marqué une préférence pour la Grande-Bretagne] (2).

L'Emir a dit à la Commission qu'il était en faveur de l'indépendance et d'une alliance avec la Grande-Bretagne.

VII. — VŒUX DE LA POPULATION

Introduction

Avant de consulter les habitants sur leurs vœux, la Commission avait, le 30 avril 1948, publié un communiqué et adressé une note complémentaire à l'administration :

> La Commission commencera son enquête dans les provinces le 3 mai 1948. Elle entendra les habitants individuellement ou en groupe. Elle décidera des lieux où elle se rendra et désignera elle-même les individus et les groupes auxquels elle donnera audience. Les gens qu'elle entendra ne devront pas avoir été désignés ou choisis à l'avance. Ceux qui désirent se faire entendre devront en faire la demande immédiatement au centre administratif le plus proche.
>
> *Note à l'Administration militaire britannique*
>
> Les autorités administratives voudront bien aviser les pétitionnaires de l'itinéraire et de l'horaire de la Commission. Ces avis seront communiqués dans les délais nécessaires pour permettre aux intéressés d'être présents lors du passage de la Commission. Il sera indiqué très clairement aux habitants que la Commission ne s'engage pas à entendre tous les pétitionnaires ni à respecter strictement l'itinéraire prévu.

---

(1) Addition des délégations de la France et de l'U.R.S.S.

(2) Addition de la délégation de l'U.R.S.S.

La Commission a commencé sa tournée le 3 mai et l'a terminée le 17 mai. Auparavant, un groupe d'enquête avait recueilli les vues des habitants des régions d'El Agheila et Agedabia sur la route de Tripoli à Benghazi. [Trois délégations seulement sont allées à Koufra, la délégation de l'Union soviétique ayant refusé de s'y rendre. L'enquête qui a été faite dans cette région a fait l'objet d'un compte-rendu mais il n'en a pas été tenu compte dans l'élaboration du chapitre lui-même] (1).

Au cours de sa tournée, la Commission a donné audience à 245 pétitionnaires dans vingt-cinq localités et a entendu dans 26 localités 225 autres individus qu'elle avait désignés à l'improviste.

Les personnes interrogées n'ont pas paru, en général, être au courant de l'objet précis de la visite de la Commission. A trois exceptions près, les personnes auxquelles la Commission a demandé si elles étaient libres d'exprimer leur opinion ont répondu affirmativement.

Degré de maturité politique de la population

Le degré de maturité politique de la population varie, dans l'ensemble, selon le niveau social des individus. Les Cyrénéens ont une tendance à se ranger derrière l'opinion de leurs cheikhs ; beaucoup auraient préféré que l'avenir de leur pays ne fût discuté qu'avec ces derniers.

Il était manifeste que le Congrès national s'était livré à une action de propagande politique avant le passage de la Commission par le truchement de ses Comités locaux. Il est difficile d'évaluer avec précision les effets de cette propagande. Il est à remarquer toutefois que la plupart des pétitionnaires étaient des cheikhs ou des notables et qu'un certain nombre d'entre eux ont déclaré qu'ils étaient membres du Congrès national ou bien qu'ils encourageaient son action. En revanche, beaucoup des individus qui ont été choisis à l'improviste ignoraient tout du Congrès national.

Au cours des consultations, les termes « gouvernement constitutionnel et démocratique » ont été prononcés à diverses reprises mais leur signification n'était généralement pas comprise. La plupart des gens qui ont été interrogés n'avaient pas une notion claire des problèmes politiques en cause. Un trait commun aux cheikhs et aux habitants est la confiance qu'ils placent dans Sayyid Mohamed Idris el Senoussi pour les guider en matière politique et en matière religieuse. Les gens considéraient le plus souvent que la forme du gouvernement futur et la nécessité d'une aide extérieure étaient des problèmes au sujet desquels lui seul était compétent.

Vœux des habitants

1. — Textes des délégations de la France, du Royaume-Uni et des Etats-Unis :

Environ 95 % des pétitionnaires se sont prononcés pour l'indépendance, 90 % d'entre eux spécifient qu'ils désiraient un gouvernement présidé par Sayyid Idris. Les autres se sont déclarés prêts à accepter toute décision que prendrait l'Emir.

Environ 45 % des gens interrogés à l'improviste se sont prononcés pour l'indépendance. 95 % de ces derniers ont spécifié que leur préférence allait à un gouvernement présidé par Sayyid Idris.

Plus de 25 % ont déclaré qu'ils accepteraient les décisions de Sayyid Idris.

Environ 20 % se sont montrés disposés à accepter un gouvernement quel qu'il soit ou bien ont fait montre d'une indifférence absolue.

Une poignée d'individus a demandé à demeurer sous l'administration britannique ou bien à être gouvernée par un membre de la Ligue.

Trois personnes ont revendiqué une tutelle italienne.

Peu avant de quitter le territoire, la Commission a reçu Sayyid Idris et a pris connaissance de son opinion sur l'avenir du pays. Un compte-rendu de cet entretien figure en annexe.

Unité de la Libye.

Très peu de gens se sont prononcés en faveur de l'unité de la Libye, les autres, quand on les interrogeait, répondaient en général qu'ils n'envisageaient l'indépendance que pour la Cyrénaïque seulement. La plupart de ceux qui ont émis une opinion ont déclaré qu'ils n'accepteraient l'union avec la Tripolitaine que si celle-ci acceptait d'être placée sous l'émirat de Sayyid Idris. Quelques-uns ont également exprimé l'avis que l'union ne pourrait se faire aussi longtemps qu'une communauté italienne demeurerait en Tripolitaine. L'union avec le Fezzan n'a suscité que très peu d'intérêt.

Aide des gouvernements étrangers.

Le point de savoir s'il serait nécessaire de faire appel au concours d'une Puissance étrangère, le choix de cette Puissance et la nature de ce concours ont été considérés le plus souvent comme des problèmes relevant de la compétence de l'Emir ou du Congrès national. Il existe toutefois un courant d'opinion appréciable selon lequel c'est la Grande-Bretagne qui fournirait ou devrait fournir l'assistance dont la Cyrénaïque a besoin ; plusieurs personnes ont même demandé une alliance avec elle. Le sentiment pro-britannique semble être fondé en premier lieu sur le « rôle » joué par les forces britanniques dans l'expulsion des Italiens de Cyrénaïque pendant la guerre.

Les personnes consultées ont souvent fait allusion à l'engagement pris par le gouvernement britannique en 1942 de ne jamais soumettre à nouveau les Senoussis à une domination italienne.

Un petit groupe d'habitants s'est refusé à reconnaître un mérite quelconque à l'administration britannique et a exprimé son opposition à l'égard de tous les étrangers.

Attitude envers l'Italie.

Le sentiment anti-italien a paru être violent et répandu. Il est fondé essentiellement sur la longue résistance opposée par les Cyrénéens aux Italiens, sur les mauvais traitements qu'ils ont reçus, les arrestations et les exécutions arbitraires, les expropriations ou confiscations des terres ou d'autres biens. Beaucoup de ceux qui ont été interrogés ont prétendu avoir combattu les Italiens avant et pendant la guerre. Un certain nombre avaient émigré au temps de la domination italienne.

La plupart de ceux auxquels la question fut posée ont déclaré qu'ils ne tolèreraient pas le retour des colons italiens. Une faible minorité serait prête toutefois à l'envisager si Sayyid Idris ou le Congrès national en décidait ainsi.

Conclusion.

[La grande majorité des Cyrénéens désirent l'indépendance et l'émirat de Sayyid Idris ; la plupart des autres souhaitent être gouvernés par Sayyid Idris dans les conditions que celui-ci décidera] (2).

---

(1) Réserve de la délégation de l'U.R.S.S.

(2) Texte des délégations du Royaume-Uni et des Etats-Unis.

[La très grande majorité des cheikhs et des notables désirent l'indépendance et l'émirat de Sayyid Idris. Parmi les habitants, une large majorité se rangerait à toute décision que Sayyid Idris jugerait bonne. Bien que la majorité se soit prononcée clairement pour l'indépendance, la plupart seraient prêts à accepter toute décision de leurs cheikhs] (1).

Une faible fraction de la population s'intéresse à l'union avec la Tripolitaine. Ce groupe de gens n'accepterait d'ailleurs cette solution que si la Libye tout entière était placée sous la souveraineté de Sayyid Idris.

L'impression existe que la Cyrénaïque aura besoin d'être aidée au point de vue économique et à d'autres points de vue par une Puissance étrangère. La plupart des gens laissent à l'Emir ou au Congrès national le soin de régler ces problèmes ; dans la mesure où une préférence se manifeste, c'est la Grande-Bretagne qui recueillerait le plus de suffrages. La notion de trusteeship n'est pas comprise et les habitants ne se sont pas prononcés pour ce système international.

Il existe une antipathie solide et générale à l'encontre de l'administration italienne. Beaucoup ont exprimé leur opposition résolue à un retour des Italiens].

2. Texte de la délégation de l'U. R. S. S.

La majorité des personnes que la Commission a interrogées ignorent l'objet de sa visite. Beaucoup ont déclaré que la Commission était venue pour « faire droit à leurs revendications et leur accorder la liberté ». Le plus souvent, les personnes interrogées avaient été prévenues de la visite imminente de la Commission un ou deux jours avant que celle-ci ne se rende dans la localité où ces personnes résidaient.

Dans les localités où les consultations populaires ont eu lieu, la Commission a pu observer que les gens n'avaient pas le désir de s'entretenir avec elle ou de lui faire connaître leur vues sur l'avenir du territoire. Par contre, les fonctionnaires locaux de l'Administration militaire britannique ont, dans chaque cas, expliqué que les cheikhs et les notables avaient été réunis et étaient prêts à s'entretenir avec la Commission si celle-ci désirait les recevoir. Toutes ces personnes ont, en règle générale, été interrogées par la Commission.

La plupart des cheikhs et des notables que la Commission a interrogés avaient pris les armes contre les Italiens avant et pendant la guerre, s'étaient enfuis du territoire au cours de l'occupation italienne et y étaient revenus après l'entrée des forces britanniques. Généralement les cheikhs élus par les tribus sont reconnus par l'administration et un certain nombre d'entre eux sont payés en leur qualité de « Mustashars » (conseillers) (3). L'influence exercée par ces personnes sur l'opinion en ce qui concerne l'avenir du pays ne saurait être sous-estimée.

Les personnes qui ont été interrogées peuvent se classer ainsi d'après leur situation sociale :

Cheikhs et notables	42 %
Fermiers	22 %
Employés	12 %
Commerçants	11 %
Bédouins	7 %
Autres personnes	6 %

La consultation des populations a eu lieu dans des circonstances que caractérisait l'absence de partis politiques. Le prétendu « Congrès national », au moyen des comités dont il disposait dans les provinces et des cheikhs, avait orienté l'opinion publique avant le passage de la Commission. Ce Congrès national a été créé par l'Emir. Il constitue une sorte de dépendance administrative de l'Administration militaire britannique.

Les promesses répétées du gouvernement britannique d'après lesquelles la Cyrénaïque ne sera plus jamais placée sous la domination de l'Italie et le statut spécial que l'Administration militaire britannique a conféré à l'Emir en Cyrénaïque ont, d'autre part, exercé une influence indéniable sur les vues de la population à l'égard de l'avenir du territoire.

La Commission a reçu plusieurs lettres recommandant de placer la Cyrénaïque sous la tutelle de l'Italie. Ces lettres témoignaient que leurs auteurs appréhendaient d'apposer leurs signatures.

Les personnes interrogées, dont il est question plus haut (voir par. 3) pour la plupart cheikhs et notables ont exprimé leur opinion en faveur de la liberté, de l'indépendance et de l'émirat du Senoussi.

CONCLUSIONS GENERALES

1. Les habitants de la Cyrénaïque sont pour la plupart des nomades, bien que depuis l'occupation italienne un mouvement se soit amorcé vers les villes.

L'organisation tribale traditionnelle demeure solide et l'influence et l'autorité des cheikhs sont décisives en toute matière mettant en jeu les intérêts collectifs de la population. A l'exception d'une très petite minorité, les habitants sont illettrés. L'influence de l'Islam se fait puissamment sentir ; une très large proportion de la population observe les enseignements de la secte Senoussie. [L'Emir Sayyid Mohamed Idris el Senoussi qui est le descendant du fondateur de cette secte est généralement considéré et accepté par la population comme la principale autorité au point de vue religieux et au point de vue politique] (2).

2. La masse des habitants ne comprend les problèmes économiques et sociaux que dans la mesure où ces problèmes ont une signification locale. [Si l'on excepte les habitants des villes, les aspirations politiques actuelles des Cyrénéens se confondent avec leur allégeance à l'Emir] (4).

[La Cyrénaïque tient une place à part parmi les anciennes colonies italiennes. Depuis le début de l'occupation britannique « pour des raisons politiques et administratives » l'on s'est abstenu de recourir à des impôts directs et notamment à l'impôt foncier; les anciennes fermes italiennes ont été louées aux Arabes moyensant des loyers très réduits et les meilleures de ces fermes sont actuellement en la possession de membres de la famille de l'Emir ; le personnel officiel de l'administration militaire britannique est saturé d'éléments arabes ; les populations rurales sont armées. L'Emir qui avait émigré en 1922 est retourné en Cyrénaïque sur les encouragements des Anglais et l'Administration lui a ménagé une position qui dépasse en importance les limites permises sous un régime d'administration d'occupation militaire. Dans le même ordre d'idées, il convient également de mentionner les déclarations faites par le gouvernement britannique au sujet de la Cyrénaïque et l'opinion énoncée par l'Administrateur en chef dans son rapport de 1947 selon laquelle « le fait que pour des raisons stratégiques le sort de la Libye intéresse au plus haut point la Ligue arabe et les quatre grandes Puissances a renforcé la confiance des Cyrénéens dans leur destin et les a incités à se montrer exigeants en ce qui concerne leur avenir »] (1)

---

(1) Texte de la délégation de la France.

(2) Réserve de la délégation de l'U.R.S.S.

(3) Note de la délégation du Royaume-Uni : Sur les mille cheikhs environ qui existent en Cyrénaïque, les « Mustashars » payés par l'Administration britannique sont au nombre de cinq.

(4) Réserve de la délégation de l'U.R.S.S.

3. [La grande majorité des habitants souhaite devenir indépendante sous l'autorité de l'Emir, la plupart des autres étant prêts à accepter toute forme de gouvernement qui aurait son accord] (2). [En ce qui concerne l'avenir de la Cyrénaïque, la très grande majorité des personnes que la Commission a interrogées se rallierait volontiers à toute solution que préconiserait l'Emir, beaucoup d'entre elles spécifiant qu'elles désirent l'indépendance](3).[Le fait que le pays aura besoin du concours d'une Puissance étrangère n'est pas contesté. Le choix de cette Puissance est laissé à l'Emir, le nom de la Grande-Bretagne étant souvent mis en avant. L'union avec la Tripolitaine éveille peu d'intérêt et suscite peu de désirs. Le retour des Italiens provoque une opposition générale et décidée] (4). [La grande majorité des gens interrogés par la Commission s'est prononcée pour la liberté, l'indépendance et l'Emirat Senoussi] (5).

4. Au point de vue économique, le territoire repose à la fois sur l'élevage et l'agriculture, celle-ci ayant souvent un caractère mouvant. [La culture sédentaire ne se pratique guère que dans la zone choisie par les Italiens pour y développer la colonisation. La plus grande partie de cette zone est à présent cultivée par des Arabes. Cette évolution a eu généralement pour effet d'entraîner un retour aux méthodes ruineuses qui étaient la règle avant l'occupation italienne] (6). L'industrie a un caractère presque exclusivement artisanal et local.

Il est possible de développer l'agriculture et l'élevage. [L'élevage offre plus de possibilités que l'agriculture] (7). Il reste beaucoup à faire au point de vue de la reconstruction et de la remise en valeur qui exigent d'ailleurs un concours extérieur et des fonds que le territoire est absolument incapable de prélever sur ses propres ressources.

[La Cyrénaïque a une structure politique et sociale homogène qui lui fournit une base relativement ferme sur laquelle un appareil gouvernemental peut facilement être superposé. A présent bien que les postes les plus importants soient tenus par des fonctionnaires britanniques, l'administration quotidienne des circonscriptions est, pour la plus grande part, confiée à des Libyens qui sont soumis à des degrés divers de contrôle. L'appareil d'un gouvernement autonome existe déjà, ainsi que beaucoup du matériel humain nécessaire pour le faire fonctionner mais les Cyrénéens ont encore besoin de recevoir une formation et d'acquérir de l'expérience avant d'être en mesure de prendre entièrement en main l'administration du pays] (8).

[Le territoire a une structure sociale homogène qui facilite son administration. Néanmoins, il n'est pas prêt à se gouverner lui-même ni sur le plan économique, ni sur le plan politique, ni sur le plan culturel. Bien que de nombreux Cyrénéens s'acquittent de responsabilités administratives, la formation qu'ils ont reçue et l'expérience qu'ils ont acquise ne sont pas suffisantes pour qu'ils puissent gouverner eux-mêmes le pays] (9).

[Il n'existe en Cyrénaïque ni personnel qualifié ni ouvriers spécialisés pour la reconstruction et le progrès du territoire] (10).

---

(1) Addition de la délégation de l'U.R.S.S.
(2) Texte des délégations des Etats-Unis et du Royaume-Uni.
(3) Texte de la délégation de la France.
(4) Texte des délégations des Etats-Unis, de la France et du Royaume-Uni.
(5) Texte de la délégation de l'U.R.S.S.
(6) Addition de la délégation de la France.
(7) Addition de la délégation des Etats-Unis.
(8) Texte des délégations des Etats-Unis et du Royaume-Uni.
(9) Texte de la délégation de la France.
(10) Texte de la délégation de l'U.R.S.S.

LE FEZZAN

Pour ce territoire, le chapitre des vœux de la population retiendra seul notre attention. Le Fezzan, en effet, a déjà fait l'objet de plusieurs publications de la *Documentation Française* dont l'une est particulièrement détaillée (1).

On sait que depuis le raid victorieux des troupes du Tchad à travers le Fezzan, au début de l'année 1943, celui-ci est occupé par la France. Un gouverneur militaire l'administre. Depuis le 1ᵉʳ janvier 1948, la région de Ghadamès, placée autrefois sous la même administration que le Fezzan, est rattachée au territoire du Sud-Tunisien. Il est à noter que la partie de la Libye occupée par la France ne coïncide pas exactement avec ce qui constituait le territoire du Fezzan sous l'administration italienne.

La population y est pauvre, la structure sociale primitive. Il n'y a pas de parti politique. L'administration française s'est efforcée d'améliorer le sort des classes les plus pauvres et notamment celle des « djebada » (tireurs d'eau) qui n'ont que le strict nécessaire pour vivre. Il est à noter que l'ensemble de la population consultée par la commission, s'est montrée satisfaite de l'administration française et que la majorité a manifesté le désir de la voir se maintenir.

VŒUX DE LA POPULATION

Introduction

En préparant l'enquête de la Commission, l'administration locale avait escompté que la Commission suivrait la procédure qui avait été adoptée dans les territoires déjà visités, c'est-à-dire, que ses méthodes d'enquête comporteraient l'audition de représentants. En conséquence, elle avait donné des instructions pour que les différentes tribus désignent des porte-parole. Elle n'avait pas toutefois prescrit la procédure détaillée selon laquelle ces porte-parole seraient choisis.

Le 28 mars 1948, la Commission adressa au chef de la délégation française la requête suivante :

> Les autorités françaises du Fezzan sont priées de faire en sorte que les indigènes appartenant à des tribus nomades, qui désirent parler à la Commission, soient présents dans le voisinage des endroits indiqués dans l'itinéraire. La Commission décidera sur place si elle désire ou non entendre ces personnes. Je vous prie également de bien vouloir transmettre aux autorités françaises une copie du communiqué qui a été publié en Tripolitaine, en leur demandant de lui donner la diffusion la plus large possible.
>
> Les autorités administratives voudront bien aviser tous les pétitionnaires de l'itinéraire et de l'horaire de la Commission. Ces avis ne seront communiqués que dans les délais nécessaires pour permettre aux intéressés d'être présents lors du passage de la Commission. Il sera indiqué très clairement aux habitants que la Commission ne s'engage pas à entendre tous les pétitionnaires, ni à respecter strictement l'itinéraire prévu.

Le communiqué était ainsi libellé :

> La Commission commence son enquête au Fezzan le 15 avril 1948. Elle entendra les habitants, individuellement et en groupes. Elle décidera des lieux où elle se rendra et désignera elle-même les individus et les groupes auxquels elle donnera audience. Les gens qu'elle entendra ne devront pas avoir été désignés ou choisis à l'avance par quiconque. Ceux qui désirent se faire entendre devront en faire la demande immédiatement au centre administratif le plus proche.

Ces documents furent transmis par le chef de la délégation française aux autorités françaises du Fezzan. Le communiqué fut publié par les autorités françaises par les voies administratives et selon l'usage.

Les élections qui avaient eu lieu furent annulées et les communautés furent avisées que les personnes qui désiraient comparaître devant la Commission devaient en faire la demande au centre administratif le plus proche. Il semble que les gens furent en outre encouragés à répondre à toutes les questions que la Commission leur poserait, librement, franchement et sans crainte ; il ne semble pas toutefois qu'en règle générale, ils aient été au courant de l'objet précis de la visite de la Commission ou des possibilités qui s'offraient en ce qui concerne l'avenir du territoire.

La Commission décida d'entendre les personnes qui avaient demandé une audience sans exclure celles qui, initialement, avaient été élues comme représentants. Elle décida également de contrôler les déclarations de ces personnes au moyen d'interrogatoires conduits à l'improviste dans les villages, dans les jardins ou le long des routes. Dans plusieurs cas, les pétitionnaires furent entendus dans leurs propres villages et en présence des autres membres de leurs communautés.

La Commission a visitée les principaux centres de population et de culture du territoire ; elle a tenu vingt-trois séances d'auditions au cours desquelles trois cents pétitionnaires ont été entendus et a procédé dans vingt villages à des interrogatoires à l'improviste au cours desquels trois cent soixante personnes furent interrogées.

Représentation

D'une manière générale, l'enquête a établi que des réunions avaient été tenues par villages ou par régions au cours desquelles des représentants avaient été nommés. Il est apparu également que le droit qu'avaient les personnes ainsi désignées de parler au nom de leur communauté n'était généralement pas contesté. Toutefois, comme le plus souvent les gens n'étaient guère au courant des problèmes en cause, le seul mandat qu'ils pouvaient donner à leurs porte-parole était de répondre pour le mieux à toutes questions qui leur seraient posées.

---

(1) C'est la *Note Documentaire* n° 936 *Notice sur le Fezzan*. Les autres publications sont les suivantes : *N. D.* n° 937 : *Notice sur la région de Ghat et de Serdeles*, et n° 939 : *Notice sur la circonscription de Ghadamès*.

Limite des intérêts politiques de la population

Les agriculteurs et les pasteurs nomades ont un horizon politique très limité. Les cultivateurs sédentaires désirent avoir un gouvernement qui les protège contre les pillards nomades, qui facilite l'importation et l'exportation des produits essentiels et qui favorise le développement de l'agriculture. [Les nomades attachent le plus grand prix à leur liberté de mouvement de part et d'autre des zones où ils font paître leurs troupeaux et où ils se livrent à la culture, au gré des précipitations] (1).

Les marchands, qui constituent une section restreinte mais influente de la communauté et dont le nombre correspond aux relations commerciales limitées qu'entretient le Fezzan avec le monde extérieur, accordent leur préférence aux solutions les plus propres selon eux à faciliter leur négoce. Ils se rendent mieux compte de l'incidence réciproque des questions politiques et économiques.

[Les Touaregs qui ont été interrogés se sont montrés, en général, disposés à respecter les décisions de leurs chefs et n'ont pas énoncé d'opinions personnelles] (2). [En général, les Touaregs qui ont été interrogés ont comparu devant la Commission sur instructions de leurs moudirs. Ils se sont montrés disposés à respecter les décisions de leurs cheikhs qui sont des agents payés de l'administration militaire française] (3).

Dans quelques villages, les gens ont déclaré qu'ils suivraient le destin de leurs centres administratifs, tels que Sebha et Mourzouk.

L'administration a déclaré et la population a confirmé que les partis politiques n'existent pas. A Ghadamès cependant, la Commission a interrogé un individu qui sympathisait avec le parti nationaliste tripolitain. Les journaux d'Afrique du Nord française circulent à l'intérieur d'un groupe restreint ; ils ne paraissent pas être une source d'inspiration politique. Les nouvelles de Tripoli sont répandues par ceux des habitants qui se rendent dans cette ville pour leur commerce. Il ne semble pas qu'il y ait d'autres véhicules d'information publique.

Liberté d'expression

Si l'on met à part un incident qui s'est produit à Mourzouk, les habitants ont paru disposer partout d'une entière liberté d'expression.

a) Texte des délégations des Etats-Unis, de la France et du Royaume-Uni

Vues exprimées dans les diverses régions

a) A Ghadamès près de la moitié des cinquante personnes qui ont été interrogées ont demandé le maintien de l'administration française. Près d'un tiers se sont prononcées pour un gouvernement islamique et ont indiqué le maintien de l'administration française comme la solution qui aurait leur préférence en second lieu. Sept ont demandé l'unité, l'indépendance et la Ligue arabe.

L'enquête n'a pas été concluante en ce qui concerne le nombre des sympathisants que le mouvement nationaliste tripolitain compte en ville. Les estimations qui ont été données sont contradictoires et varient de « 3 ou 4 » à 450.

b) A Ghat, la large majorité des soixante-trois personnes qui ont été interrogées (presque toutes étaient des cheikhs touaregs) ont demandé le maintien de l'administration française. Les autres accepteraient tout gouvernement qui maintiendrait la paix et la sécurité et se déclarent satisfaits de l'administration française.

c) Dans le reste du Fezzan, le plus large secteur de l'opinion est en faveur d'un gouvernement islamique ; environ la moitié des gens qui appartiennent à ce secteur de l'opinion se sont prononcés en second lieu pour le maintien de l'administration française. La plupart des autres accepteraient tout gouvernement que désigneraient les quatre grandes Puissances.

La plus grande quantité des personnes qui ne font pas partie de ce secteur de l'opinion se sont prononcées pour le maintien de l'administration française.

Plusieurs personnes interrogées dans la région de Mourzouk à Brak et à Sébah ont manifesté le désir d'être unies à la Tripolitaine.

Une large majorité de ceux qui n'ont pas exprimé de préférence positive semblent satisfaits de l'administration française.

Vues exprimées dans l'ensemble du territoire

Différents points de vue ont été exprimés dans l'ensemble du territoire et ont recueilli les suffrages suivants :

1° 209 ont demandé le maintien de l'administration française ;

2° 276 décideraient avoir un gouvernement islamique ; parmi eux, 144 ont indiqué que si une telle éventualité n'était pas possible, ils seraient satisfaits du maintien de l'administration française ; 95 accepteraient tout gouvernement quel qu'il soit (13 d'entre eux, en réponse à une question posée par la Commission, ont ajouté qu'ils préféreraient que le Fezzan et la Tripolitaine soient placés sous une seule administration ; 37 ont demandé l'union avec la Tripolitaine) ;

3° 129 ont indiqué qu'ils n'avaient pas d'idées arrêtées en ce qui concerne l'avenir du pays mais qu'ils seraient satisfaits si l'administration française demeurait en place ;

4° 12 ont demandé que le Fezzan soit uni à la Tripolitaine quel que soit le gouvernement établi à Tripoli ;

5° 7 ont demandé l'indépendance, l'unité et l'affiliation à la Ligue arabe ;

6° 6 ont dit qu'ils se rangeraient à la décision du Bey Ahmed, Moutassarif du Fezzan ;

7° Un individu s'est prononcé pour un gouvernement islamique, tout en demandant l'union du Fezzan et de la Tripolitaine et le maintien de l'administration française ;

8° 21 n'ont exprimé aucune préférence.

Conclusions

En raison de la manière fortuite dont ont été désignées les personnes interrogées dans les villages et étant donné que dans certains villages les vues d'une majorité des habitants ont été enregistrées tandis que dans d'autres villages peut-être aussi importants une poignée d'indigènes seulement a été consultée, les chiffres donnés ci-dessus indiquent seulement la tendance générale de l'opinion.

---

(1) Réserve de la délégation de l'U.R.S.S.

(2) Texte des délégations des Etats-Unis, de la France et du Royaume-Uni.

(3) Texte de la délégation de l'U.R.S.S. ; réserve de la délégation de la France.

Comme le public manque d'éducation politique et qu'il n'était pas clairement conscient du but de la visite de la Commission, les problèmes en jeu n'ont pas, en règle générale, fait l'objet d'un examen préalable.

Si l'on tient compte des considérations exposées dans les deux paragraphes ci-dessus l'on peut dire que :

a) Beaucoup de gens sont en faveur d'un gouvernement islamique ; un certain nombre d'entre eux ont spécifié qu'un tel gouvernement ne devrait être soumis à aucune ingérence étrangère ; mais les personnes que la Commission a interrogées semblent être sceptiques quant à la possibilité d'une telle solution et un bon nombre recommandent en second lieu le maintien de l'administration française ;

b) Les agriculteurs sédentaires apprécient particulièrement le concours que leur apporte l'administration française. Ils désirent un gouvernement solide qui les garantisse contre les pillages des nomades. La grande majorité d'entre eux seraient très satisfaits si l'administration française était maintenue ;

c) Les Touaregs qui habitent au Fezzan souhaitent être placés sous la même administration que la majorité de leurs congénères qui sont administrés par la France;

d) La Commission a entendu des membres de deux tribus arabes du Fezzan dont les pâturages et les zones de culture s'étendent en Tripolitaine (Zintan et Megarha). Ces indigènes ont exprimé le désir que les deux zones soient soumises à une seule administration. Ce point de vue a trouvé un écho auprès de personnes habitant Mourzouk ou des villages voisins de Sebha ainsi qu'auprès d'individus dans d'autres régions ;

f) Les excès des dirigeants Senoussis au cours de la période qui s'étend de 1915 à 1930 ont laissé une marque dans l'esprit des indigènes. Ces dirigeants Senoussis ne sont pas considérés comme capables de former un gouvernement.

b) Texte de la délégation soviétique

Voeux de la population

Au cours de son séjour au Fezzan, la Commission a interrogé environ 700 personnes.

Les interrogatoires conduits au Fezzan ont ceci de caractéristique que dans la moitié environ des localités, les individus interrogés n'avaient pas d'opinion arrêtée en ce qui concerne le gouvernement futur du pays et s'exprimaient au moyen de formules telles que : « soit... soit... ».

Seuls les Touaregs ont fait exception. Ils représentent environ 20 % des individus interrogés. Ils se sont prononcés en faveur du maintien de l'administration française.

En règle générale, les Touaregs se sont présentés à la Commission sur instruction de leurs moudirs et ont déclaré qu'ils se conformeraient aux décisions de leurs chefs. Ceux-ci, d'après l'administration militaire française, reçoivent des émoluments de l'administration. Les Touaregs ont déclaré que l'administration française les traitait bien et les exemptait de taxes, tout en ajoutant que l'ancienne administration italienne les avait également bien traités.

Opinions sur l'avenir du pays

1° En faveur de l'administration française : 44 % (dont environ une moitié de Touaregs) ;

2° Pour un gouvernement quel qu'il soit : 26 % ;

3° Pour un « gouvernement islamique » : 18 % ;

4° Pour tout gouvernement désigné par les quatre puissances : 12 %.

CONCLUSIONS GENERALES

Les habitants sont tous musulmans. Les trois quarts d'entre eux sont sédentaires ; un quart consiste en indigènes nomades ou semi-nomades. En général, la population a gardé une structure tribale. Les habitants du territoire sont illettrés dans la proportion de 90 % environ.

Les conditions de vie sont difficiles. Le pays est pauvre, ainsi que la population et les classes inférieures qui comprennent les travailleurs agricoles, et les djebads n'ont que le minimum strictement nécessaire pour leur subsistance. [Une partie des habitants a toujours eu tendance à émigrer] (1). [Depuis de très nombreuses années, une partie de la population se rend dans les pays voisins pour y chercher du travail] (2). La plupart des habitants dépendent à des degrés divers [des secours ou de l'assistance de] (3) de l'administration.

Une partie considérable des djebadf (tireurs d'eau) qui, d'après l'Administration française, comptent au total 950 familles environ, se trouve dans une condition voisine du servage. [L'Administration française a entrepris leur émancipation en prenant leurs dettes à son compte.] (4)

Il n'y a pas de partis politiques, ni d'autres organisations similaires dans le territoire. La population manque de maturité au point de vue politique et subit fortement l'influence de la religion.

[L'enquête de la Commission tend à montrer que la plupart des habitants sont satisfaits de l'Administration française et n'ont guère envisagé un changement de régime. Beaucoup, toutefois, accueilleraient volontiers un gouvernement islamique. Il n'y a pas de sentiment anti-italien.] (5)

[L'enquête de la Commission tend à montrer que la plupart des gens que la Commission a interrogés ont exprimé leur satisfaction de l'administration actuelle. Dans beaucoup d'endroits, la plupart des gens interrogés ont remercié les quatre puissances d'avoir chargé une Commission quadripartite de s'informer de leurs désirs en ce qui concerne l'avenir du pays. Ils ont demandé à la Commission que l'on tienne compte de leurs sentiments musulmans lorsque l'avenir du Fezzan sera décidé, et ont indiqué qu'ils n'avaient pas été maltraités par l'Administration italienne.] (6)

Les ressources économiques connues du pays sont très limitées. Le pays ne peut vivre à l'aide de ses propres ressources, il n'y a pas d'industrie. L'agriculture et les autres ressources économiques pourraient être développées jusqu'à un certain point, si les travaux d'irrigation étaient poussés davantage.

Le commerce a une importance réduite. Il est concentré principalement entre les mains [d'un groupe d'achat partiellement financé par l'Administration française et qui s'approvisionne en territoire français] (7) [de l'administration] (8). Les dattes constituent presque le seul article d'exportation ; les importations ne comprennent que des produits rationnés et des articles de première nécessité.

Un gouvernement stable [et l'unité avec la Libye] (9) est essentiel si le médiocre niveau de vie économique actuel du territoire doit être élevé ou même maintenu, et si la paix et la sécurité doivent être préservées.

---

(1) Texte des délégations des Etats-Unis, de la France et du Royaume-Uni.

(2) Texte de la délégation de l'U.R.S.S.

(3) Réserve de la délégation de l'U.R.S.S.

(4) Addition des délégations des Etats-Unis et de la France.

(5) Texte des délégations des Etats-Unis, de la France et du Royaume-Uni.

(6) Texte de la délégation de l'U.R.S.S.

(7) Texte des délégations des Etats-Unis, de la France et du Royaume-Uni.

(8) Texte de la délégation de l'U.R.S.S.

(9) Addition de la délégation de l'U.R.S.S.

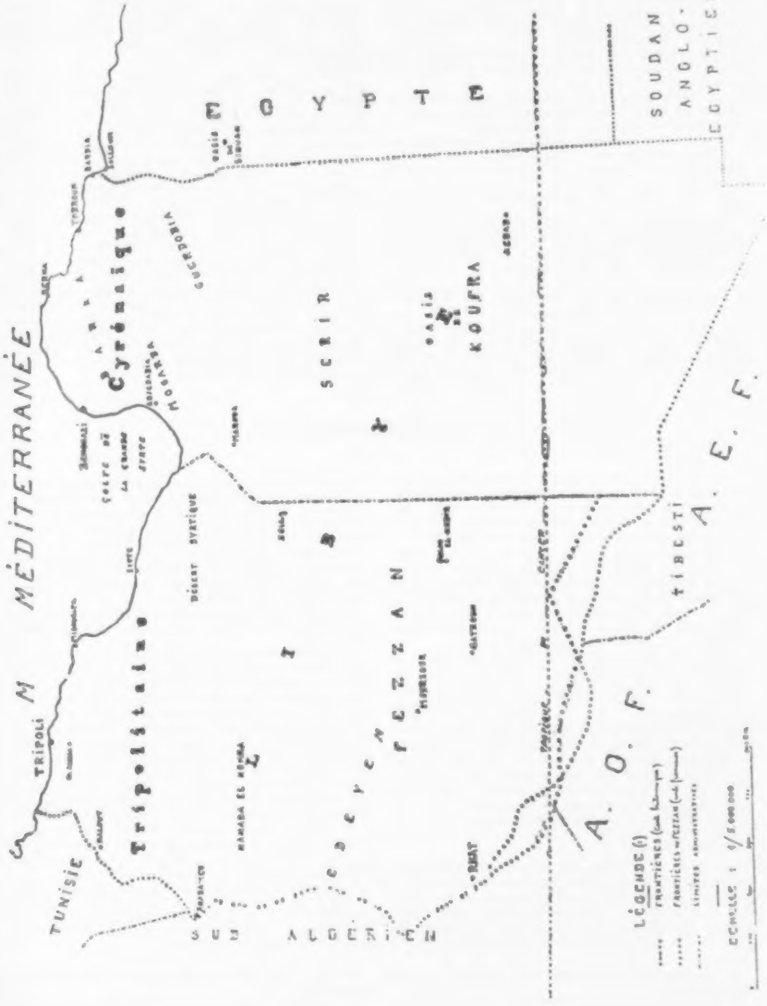
N. B. — La carte ci-contre a été tracée d'après celle qui figure dans le rapport, laquelle est une reproduction de la carte d'Etat-Major britannique établie elle-même suivant celle que fit dresser en 1937 le Ministère Italien des Colonies.

La frontière sud du Fezzan qui figure sur cette carte est contestée par la France. Aussi, a-t-on reproduit approximativement, tout au long de la partie contestée, la frontière qui figure dans la carte française établie en février 1948 par le Gouvernement Général de l'Algérie.

Note de la délégation française

La frontière qui figure sur la carte établie par le Gouvernement Général de l'Algérie est celle qui a été définie par le protocole franco-italien qui régla la question des frontières entre la Libye d'une part, l'A. O. F. et l'A. E. F. d'autre part. Ce protocole, qui fut signé le 10 janvier 1924, est encore en vigueur.

La frontière qui figure sur la carte d'Etat-Major britannique se base sur un accord conclu entre le Gouvernement Français et le Gouvernement Italien le 7 janvier 1935. Cet accord, qui ne reçut jamais de ratification et qui fut formellement dénoncé par le Gouvernement Italien en 1938, n'entra jamais en vigueur.


MÉDITERRANÉE
M
TUNISIE
TRIPOLI
Tripolitaine
HAMADA EL HOMRA
DÉSERT SYRTIQUE
SYRTE
GOLFE DE LA GRANDE SYRTE
BENGHAZI
BARCA
Cyrénaïque
DERNA
TOBROUK
BARDIA
SOLLOUM
MARMARICA
GIARABOUB
OASIS DE SIOUAH
EGYPTE
SOUDAN ANGLO-EGYPTIEN
SCRIR
OASIS DE KOUFRA
L
I
B
Y
E
FEZZAN
MOURZOUK
GHAT
TIBESTI
SUD ALGÉRIEN
A. O. F.
A. E. F.
LÉGENDE (1)
FRONTIÈRES
FRONTIÈRES DU FEZZAN
LIMITES ADMINISTRATIVES
ECHELLE : 1/8 000 000

des vues que lui dictaient ses sentiments de crainte et d'incertitude quant à sa propre sécurité, sentiments ressentis plus vivement encore après les événements du 11 janvier 1948 à Mogadiscio.

On a remarqué une grande divergence entre les vues des représentants et celles des habitants interrogés par la Commission.

Les points de vue sur l'avenir du pays peuvent se répartir de la façon suivante quant au fond et selon le nombre des personnes qui les ont exprimés :

1° Une tutelle des quatre puissances pendant dix ans.

2° Tout gouvernement désigné par les quatre puissances, qui fera régner la paix et la sécurité dans le pays.

3° Tout gouvernement, quel qu'il soit, ou pas d'opinion.

Viennent ensuite, dans l'ordre décroissant, les prises de position en faveur de l'Italie, d'une tutelle britannique et de l'indépendance. L'union de toutes les Somalies a recueilli le moins de suffrages.

c) Texte proposé par les délégations des Etats-Unis et du Royaume-Uni

Les vues exprimées par les représentants élus et celles qui ont été recueillies de la bouche d'individus choisis au hasard, indiquent que la plupart des habitants du pays sont favorables à une tutelle des quatre puissances conduisant à l'indépendance dans un délai d'environ dix ans. Les partisans de cette formule soulèvent des objections contre l'éventualité d'un gouvernement par une seule puissance quelle qu'elle soit, et particulièrement par l'Italie.

Le désir le plus fort de la minorité est en faveur de tout gouvernement choisi par les quatre puissances, qui garantira la paix et la sécurité. Les secteurs défendant ce point de vue constituent des îlots à l'intérieur de zones plus vastes soutenant l'avis de la majorité. Ils sont enclins à suivre les tendances des tribus. Bien que la plupart des individus ayant cette opinion soient favorables ou ne s'opposent pas à un retour de l'Italie, la Commission a enregistré néanmoins des objections de la part de certains d'entre eux.

Dans un petit nombre de régions seulement, on a exprimé une opinion de quelque portée sur une puissance déterminée. A Brava et, dans une mesure plus restreinte, à Itala, la population s'est montrée très pro-italienne. Dans le Juba inférieur, au contraire, l'opinion a été fortement pro-britannique et encore plus fortement anti-italienne. Dans les secteurs où les habitants ont été soumis au travail forcé, les sentiments des habitants se sont avérés, sauf rares exceptions, anti-italiens. Partout où l'on a posé la question d'un gouvernement par l'Ethiopie, des objections ont été soulevées contre une telle solution.

CONCLUSIONS GENERALES

[Les événements qui se sont produits à Mogadiscio le 11 janvier ont influencé de façon excessive la rédaction du rapport, et le fait qu'ils se sont produits pendant que la Commission se trouvait dans le territoire a eu pour effet de leur prêter une importance exagérée] (1).

Les populations de Somalie ont conservé leur structure tribale et leurs modes de vie primitifs. Presque tous les habitants sont illettrés. Ils ne s'intéressent pas généralement aux problèmes économiques, politiques et sociaux, et ne les conçoivent que dans le cadre de leurs tribus. Dans les affaires de tribus, ce sont généralement les chefs et les anciens qui orientent l'opinion.

[Cette structure n'a guère été ébranlée par l'influence des partis politiques qui, pour la plupart, se sont formés à une date récente et en vue de la décision qui doit être prise au sujet de l'avenir du pays. Ces partis ont peu d'influence en dehors des villes, et leur rivalité prend souvent la forme de querelles entre tribus. Même la Ligue de la Jeunesse somalie, qui prétend affranchir les indigènes de leurs liens tribaux, se confond souvent, dans l'esprit des populations, avec les tribus Darod, où elle a pris pied plus profondément. De la même manière, les partis qui se rattachent à la « Conférence somalie » se sont développés dans le cadre des tribus, en réaction contre les intrusions de la Ligue de la Jeunesse somalie] (2).

[En dépit de ce défaut de maturité, un mouvement nationaliste s'est développé rapidement dans tout le pays, au cours des cinq dernières années, sous la direction de la Ligue de la Jeunese somalie. Il embrasse la plupart des éléments citadins et, par l'entremise des chefs et des anciens, il a gagné presque toutes les tribus, sauf celles qui font partie de la Confédération Sol et quelques autres. Ce mouvement est bien organisé. Il dispose de dirigeants relativement compétents et il pourrait bien constituer, dans l'avenir, le facteur le plus important dans la vie politique de la Somalie.

Les autres partis politiques se sont développés en opposition à la Ligue de la Jeunesse somalie. A l'exception de l'un d'entre eux, ils sont de formation récente. Leur influence est réduite] (3).

[Le développement des partis a exacerbé les relations entre tribus. Il contribue au sentiment général d'insécurité] (4).

La structure économique de la Somalie a été caractérisée jusqu'à présent par l'incapacité du territoire à satisfaire ses besoins élémentaires à l'aide de ses propres ressources. Bien que le niveau de vie moyen des habitants se soit abaissé depuis la guerre, ce déséquilibre s'est accentué, car la production nationale a décru considérablement et le volume des échanges extérieurs a diminué. L'on ne peut cependant affirmer avec certitude que ce déficit soit irréductible. Il n'est pas impossible d'étendre les superficies cultivées et d'améliorer leur rendement. La mise en valeur de la Somalie italienne est un problème à longue échéance, dont la solution dépend de la stabilité politique du pays, de l'investissement de capitaux importants, du maintien de la coopération entre les indigènes et les autres habitants, du concours et des conseils de l'étranger.

A présent, le pays n'est pas assez développé au point de vue politique et au point de vue économique pour se gouverner lui-même. Les partis sont d'accord sur ce point, comme d'ailleurs tous les habitants du territoire que la Commission a interrogés.

---

(1) Addition des délégations des Etats-Unis et du Royaume-Uni.

(2) Texte proposé par les délégations de la France et de l'U.R.S.S.

(3) Texte proposé par les délégations des Etats-Unis et du Royaume-Uni.

(4) Addition proposée par les délégations de la France et de l'U.R.S.S.

Exhibit LC-M 6

Encl

J

British Embassy,
PARIS.

INDEXED

73/222/55)

IDENTIAL

JT 10317/150

August 4, 1955.

My Dear Tom,

Beaudouin gave Barker the following information today about the Franco-Libyan negotiations.

2. Full texts have been agreed between the two delegations for the Treaty of Friendship, and for the technical agreement which will regulate the evacuation of French troops from the Fezzan and the facilities which France will enjoy in peacetime. The Treaty will be for twenty years. The most important article from the French point of view is Article 5 which provides for consultation between the Libyan and French Governments for the defence of the area in the event of aggressive war or threat of aggressive war. The Quai d'Orsay think that the Libyan wording for this article, which they have finally accepted, safeguards their position adequately; at all events, they had had to accept that the Libyans would never agree to any public mention being made of the secret Anglo-French agreement on wartime facilities.

3. The technical agreement provides for the evacuation of French troops within 12 months from the date of the entry into force of the Treaty, and at latest, November 30, 1956. The French had opened the bidding with a request for 18 months, to which the Libyans had replied with an offer of nine; Beaudouin said that the Quai d'Orsay were satisfied with this compromise and thought that it would give the military authorities enough time to play with. Even if the Treaty did not enter into force until after November 30, 1955, the French now had a firm date for their departure and could plan accordingly. The Libyans had apparently set great store by securing French evacuation before the anniversary of Libyan Independence on December 24, 1956.

4. The other arrangements covered by the technical agreement are:-

(i) Use of trans-Saharan routes

The use of Piste No. 5, which is most important for the French, has apparently been approved for the duration of the Agreement on condition that Libyan clearance is obtained in advance for each convoy: it is specified that such clearance will not be unreasonably withheld subject to a maximum of six convoys of 30 vehicles in each direction every year. This will allow a largish convoy to Lake Tchad every two months, which the French military people think will be easily sufficient. Certain other routes, to Fort Saint and Fort Djames, will be open to the French on similar conditions for a period of two years while the French see what alternative arrangements can be made to route the traffic through French territory.

(ii) French technicians on Libyan airfields

The Libyans have agreed that for the duration of the Treaty the civilian technicians at the three airfields of Sebha, Ghat and Ghadames shall

/be in a

. E. Bromley, Esq., C.M.G.,
African Department,
Foreign Office, S.W.1.

be in a French majority. In return the control of the airfields will be handed over entirely to the Libyans at the end of twenty years.

(iii) Staging and over-flying rights

French aircraft will enjoy staging and over-flying rights, (presumably at the same airfields), for a period of five years; Libyan clearance for each flight will be required but such clearance will again not be unreasonably withheld. Beaudouin was vague about what would happen after five years but the French seem happy about securing suitable arrangements thereafter.

4. Beaudouin did not mention that there had been any difficulty on the frontier question but Barker understood from a conversation on the telephone which Beaudouin had within the Department during his visit that the question had not yet been discussed in detail.

5. In general M. Dejean had reported that the atmosphere in Tripoli had been extremely cordial. For their part, the Quai d'Orsay were pleased with the Agreement and thought it should be good enough to satisfy General Koenig. The texts were to be discussed in the Conseil des Ministres this morning.

6. Before anything is signed, however, there are a certain number of supplementary provisions to be negotiated, notably the financial arrangements. Beaudouin confirmed that the Libyans had started off by asking for a French financial contribution similar to our own; the French were of course arguing that there was no analogy since the facilities they were to receive were so much more restricted than those accorded to Her Majesty's Government. They were therefore thinking on the lines of a modest financial contribution for a limited period of, say, two or three years, after which their aid might take the form more of technical assistance than direct financial subventions.

7. In addition, Ben Halim had shown himself surprisingly favourable to a cultural agreement, which the Quai d'Orsay thought might be valuable for their own parliamentary purposes. Texts of agreements on this and the financial question were now being discussed by the drafting committee in Tripoli. The complete series of agreements, Beaudouin said, would stand together and be signed and submitted for ratification by the two Parliaments as a whole.

8. For their part, the French did not wish signature to take place until the parliamentary holidays had started; but it was quite possible that an announcement might be made within a few weeks from the parliamentary recess.

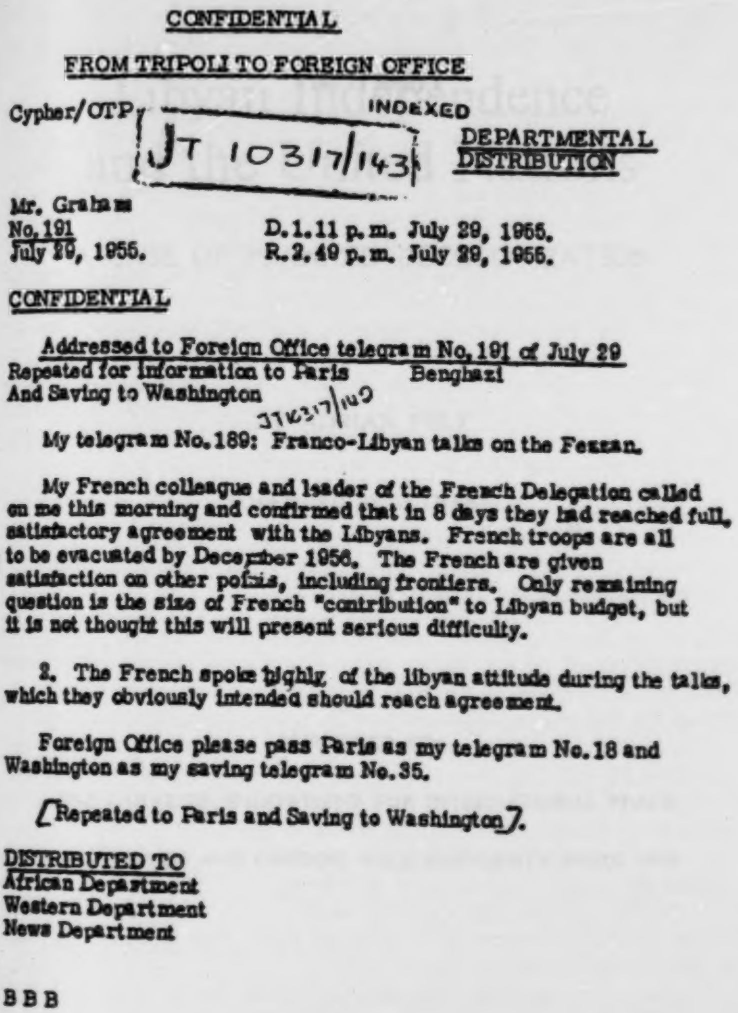
9. I am sending copies of this letter to the Chanceries at Tripoli and Benghazi.

Yours ever,

Tony Duff

(A. A. Duff)

Exhibit LC-M 7



CONFIDENTIAL

FROM TRIPOLI TO FOREIGN OFFICE

Cypher/OTP

INDEXED

JT 10317/143

DEPARTMENTAL DISTRIBUTION

Mr. Graham
No. 191 D. 1.11 p.m. July 29, 1955.
July 29, 1955. R. 2.49 p.m. July 29, 1955.

CONFIDENTIAL

Addressed to Foreign Office telegram No. 191 of July 29
Repeated for information to Paris Benghazi
And Saving to Washington

JT10317/140

My telegram No. 189: Franco-Libyan talks on the Fezzan.

My French colleague and leader of the French Delegation called on me this morning and confirmed that in 8 days they had reached full, satisfactory agreement with the Libyans. French troops are all to be evacuated by December 1956. The French are given satisfaction on other points, including frontiers. Only remaining question is the size of French "contribution" to Libyan budget, but it is not thought this will present serious difficulty.

2. The French spoke highly of the libyan attitude during the talks, which they obviously intended should reach agreement.

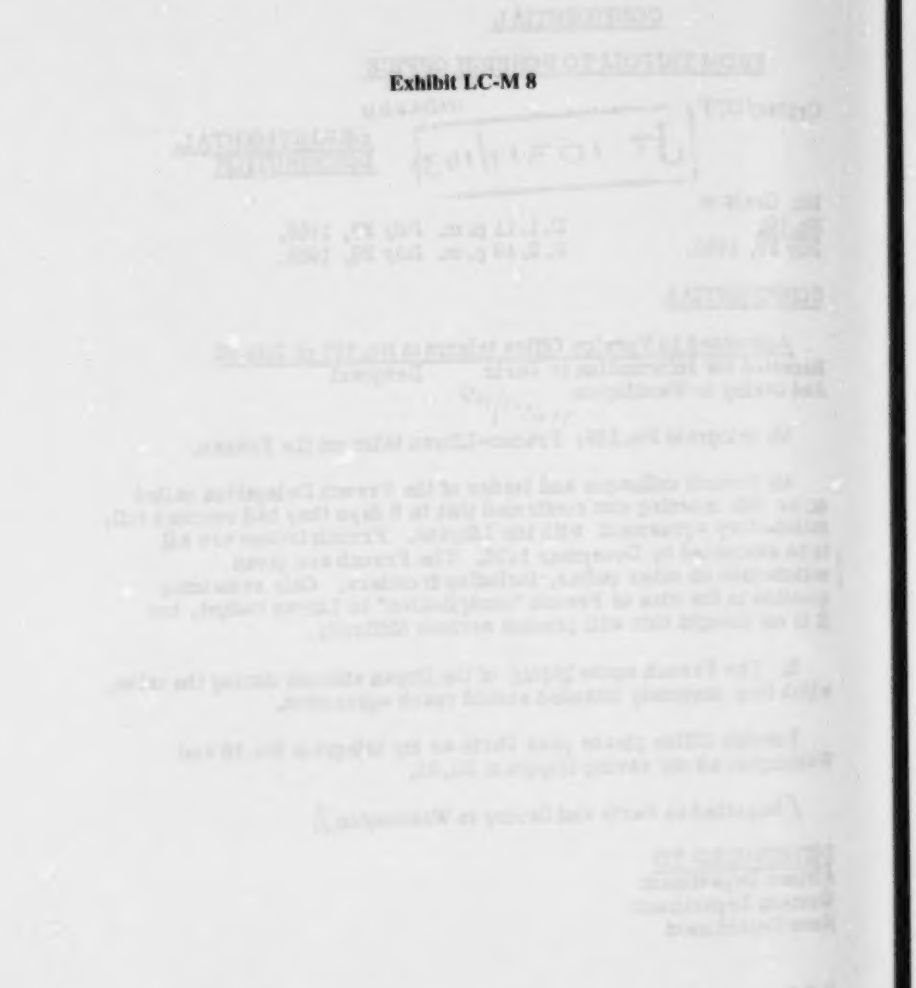
Foreign Office please pass Paris as my telegram No. 18 and Washington as my saving telegram No. 35.

[Repeated to Paris and Saving to Washington].

DISTRIBUTED TO
African Department
Western Department
News Department

BBB

Exhibit LC-M 8



Libyan Independence and the United Nations

A CASE OF PLANNED DECOLONIZATION

BY ADRIAN PELT

FOREWORD BY U THANT

PUBLISHED FOR
THE CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

NEW HAVEN AND LONDON, YALE UNIVERSITY PRESS, 1970

> boundaries were already fixed in international agreements, and the question of further delimitation could and ought to be left to the parties concerned.[90]

General agreement was finally reached in Sub-Committee 17, and subsequently in the First Committee, that the task of the General Assembly was to fix a *procedure* for delimiting these boundaries, rather than to delimit or adjust them itself. When, however, in the course of a debate in the Sub-Committee on the proposed Italian trusteeship for Italian Somaliland, the Ethiopian representative announced that his country would not sit on a boundary commission with mediatory powers, as suggested by the United States delegation, to delimit the frontier between Ethiopia and former Italian Somaliland, the matter of boundaries was dropped for the time being.

Nevertheless, delegations continued their discussions in private, and as a result, on 11 November 1950, the delegations of Argentina and Turkey introduced in the First Committee a draft resolution, the operative paragraph of which called upon the Interim Committee

> to study the procedure to be adopted to settle the question of the boundaries of the former Italian colonies in so far as they are not already fixed by international agreement and report with conclusions to the fifth regular session of the General Assembly.[91]

Later, at the Committee's three hundred and twenty-third meeting, the representative of France, stating specifically that he wished it to be made clear that the purpose of the proposed procedure was not to adjust but to delimit the boundaries, suggested that the phrase "to settle the question of" be replaced by the words "to delimit," to which the sponsors of the draft resolution agreed. For the rest, most of the arguments advanced in Sub-Committee 17 were repeated, but the draft resolution as amended was adopted in plenary session without further change.

The matter was thus referred to the Interim Committee for the sole purpose of gaining time at the Fifth Session; but this procedural decision did not meet with the approval of the Soviet Union, which had regarded the Interim Committee from the outset as an illegal body. It accordingly took no part in that committee's work.

The Interim Committee took the matter up in January 1950, but, admitting its ignorance of the various boundary questions involved, asked the Secretariat to study the problems. The result was the memorandum already

---

[90] Ibid., pp. 11–13.

[91] GAOR: Fourth Session, 1949, First Committee, Annexes to Summary Records, Agenda item 19 (A/C.1/536/Rev.1, 11 November 1949), p. 35.

Exhibit LC-M 8

French/Libyan Negotiating Delegations
Frontier Demarcation Sub-Committee

Minutes of the first meeting

The sub-committee met at 4 p.m. on 17 November 1956.

1) a. The following represented Libya at this meeting:

1 - Mr. Ahmed Al-Arabi Abdul Qader, administrator of justice, Fezzan Province;

2 - Mr. Abu Bakr Ahmed Abu Bakr, member of the oil board, Fezzan Province;

3 - M. Weiszmann (phonetically), Libyan delegation specialist;

Secretary of delegation: Ibrahim Muhammad Al-Mit.

b. The French side was represented by:

1 - M. Chaillot, head of delegation;

2 - M. Le Bon, specialist;

3 - M. Sigala, specialist. (names phonetically)

2) The head of the Libyan delegation, Mr. Ahmed Al-Arabi Abdul Qader opened the meeting by welcoming the members of the French delegation, reminding them of the Minister's observation at the morning meeting, encouraging them to reach agreement between the two sides, and for all to be realistic and primarily to seek out the facts.

(underlining is in ink in the Arabic text)

3) Procedural questions. The specialist then spoke about the procedures best to be agreed upon in advance, namely the negotiating language (ringed in ink in the Arabic). He reminded everyone that it had been agreed at the morning meeting of the main body that the negotiating language should be Italian, and then reminded them of the need to translate what was said by the French delegation to the Libyan members into the agreed language. He then referred to the concluding protocol (to be made) in the discussions.

4) Subject of discussion. The specialist then spoke again on procedural matters as follows:-

a. The appointment of the sub-committee. He referred to what had already been agreed at the morning meeting, namely that each side would have two or three members and a secretary.

b. The sub-committee's task, referred to by the specialist as the following:

i) To review the facts, involving political and technical documents and papers, as a basis for discussion.

At this point he suggested that the two sides begin with a general review of the whole frontier, to include the agreements and treaties to be resorted to in this regard.

But the head of the French delegation expressed the view of his
Government that study should be confined only to the frontier)
between Gadames and Ghat, or between Ghat and Gadames. He)
supported this view by the fact that some other frontier areas)
had been ironed out in the past under international agreements)
concluded between France and the States who governed Libya,)

(bracketed lines have following sideline comment: 'perhaps due to shortness of time; any other explanation?')

like Turkey and Italy, such as the 1910 and 1919 agreements and the agreement concluded with the Libyan Government in 1955.

But the specialist replied that to facilitate everybody's task we should first make a general review of the frontier as a whole, followed by a discussion of the Ghat-Gadames issue afterwards.

The head of the French delegation repeated his opinion that discussion should be confined to the area between Gadames and Ghat, concentrating all his concern upon this.

The head of the Libyan side that there had to be an exchange of views, and that we should review the frontier as a whole.

When the specialist found that the French side was beginning by highlighting the Gadames-Ghat area in particular, he asked whether it would be possible to proceed to discuss the frontier at the start of the Tunisian border and thence towards the south.

After some deliberation by the French delegation, the head of)
it said that the delegation had no objection to discussion)
beginning at Takhr Khoury in the far south and thence towards)
the north.)

(bracketed lines are sidelined in ink, with comment: 'important')

With regard to the sector from Gadames to Ghat, the delegations discussions whether the 1919 agreement should be the basis for discussion, with the field then being open for the sector running from Ghat to Toumou.

The specialist then observed that since Libya was an emerging nation and wanted to draw up large clear maps of the frontier area, he wished to know whether he had in his possession maps showing the frontier marks in larger form. The French specialist produced a relatively large map of the area of the Libyan western frontier (1949 edition), but the Libyan specialist asked to be provided with maps even larger. The French specialist said he would examine the possibility of providing the Libyan delegation with maps at 1:100,000 scale from a 1956 edition, some aerially photographed areas at 1:50,000, and some photographs at about 1:100,000.

(underlining in ink in the Arabic, and sidelined)

The Libyan specialist asked the head of the French delegation about the possibility of making a visit to the frontier area under discussion, saying that they needed to go there so as to get a proper appreciation of the situation. It appears that this suggestion did not meet with much approval from the French, on

(marginal Arabic note: 'French not keen on the visit;
was this also due to shortness of time?')

the argument that such a visit could have been made earlier. But they nonetheless indicated they were prepared to go, aboard a French aircraft which they said had been placed at the disposal of the two delegations. The idea of the flight would be to land at Sabha, and from there all would go by vehicle (Land Rover) to Gadames and Ghat. ....(text discontinues)

Libyan-Algerian Frontier
Negotiating Sub-Committee

Minutes of second meeting

The delegations met at 5 p.m. on 20 November 1956.

After opening the meeting, Mr. Omar Al-Barouni told the French delegation that he understood from the Minister that the French delegation was keen to put forward its own proposals on the frontier. He would be pleased to receive these proposals so that the members of the Libyan delegation could examine them.

The head of the French delegation replied that the members of the delegation had come specifically to discuss the frontier between Gadames and Ghat. The delegation was not authorised to discuss the rest of the frontier. Mr. Omar Al-Barouni made the reservation that the Libyan delegation was unable to discuss only the Gadames-Ghat sector; however, he accepted the French delegation's proposals on the basis that the Libyan delegation be given adequate time to study them along with the Minister.

At this point the head of the French delegation produced a long map and some aerial photographs. The head of the French delegation also agreed to discuss the Gadames-Ghat area on the basis of the 1919 agreement, as well as the reservation made by the Libyan delegation that the way must be left open for discussion of the southern part.

Here M. Weiszmann (phonetically) stated that the members of the Libyan delegation had no alternative but to consent to the French proposals and the maps and photographs, and to study them all.

M. Weiszmann (phonetically) suggested that the members of the delegations take five minutes off to discuss whether the delegations were to continue discussion or to adjourn till the next meeting.

When the break was over, M. Weiszmann (phonetically) asked for the meeting to be extended so that he could get some essential information to add to what he had. So the two sides resumed the discussions.

M. Weiszmann (phonetically) started by accepting that the French delegation was no doubt well informed of the frontier situation and had maps and photographs. The Libyan delegation therefore hoped that the French delegation would let it have its interpretation of the 1919 agreement as viewed by the French, in the light of which the Libyan delegation could grasp the parameters of the subject. He added that the French should appreciate that the caravan routes, which would also be for discussion, did not mean the frontier issue.

The French delegation replied that they reserved their position on the caravan routes to which they would be referring, and the Libyan delegation also reserved its position.

At this point the French specialist M. Frelon and Colonel Le Greux Dallon (phonetically) illustrated the caravan route which began at Gadames and went south towards Ghat, as viewed by the French delegation and as in the 1919 agreement. He then continued as follows:

It is a known fact that a straight line joining two points is the closest one can get, but it frequently happens that this line is curved and longer in distance, since caravan routes and the nature of the desert often lengthen the distance when water sources lie in places which make it necessary for caravans to divert towards them. He then illustrated the route he called Aberka Mislan.

Aberka Mislan: M. Frelon (phonetically) explained this route and the places through which it passed as follows:

Wadi Al-Amassin, cutting the Hamada Al-Hamra - Shu'ba Al-Dib.

Wadi Aghahar Millin - Wadi Anyazar - Azoueirat

Wadi Aynaramas - Tayy Touzit (Tahy Tebboussit) - Djikadin - Zarzayetin. Anwaynazawan (said by the Phoenicians to be a very important well) - Al-Mislan - Touman Sherif.

The delegations spent the rest of the time locating these points on the maps and joining them up with a line.

The meeting then closed at 8 p.m., and it was decided to meet again at 11 a.m. next day.

Exhibit LC-M 10

CONFIDENTIAL

British Embassy in Libya,
TRIPOLI.

(1031/96)

September 10, 1956.

JT10317/12

JT1051/9

My dear Watson,

With reference to my telegram No. 302 of to-day, the following further information about the French position here may be of interest. Even before the start of the Suez crisis the French were faced with the probability of trouble in the autumn, and the situation has naturally got no easier.

2. As you know, the Franco-Libyan Agreements, which were initialled just over a year ago, have been ratified by the Libyan Parliament, but not yet by the French. As provided in the terms of the Agreement the French evacuated two small posts in the Fezzan last autumn, in advance of ratification, but the main evacuation of Sebha and Gedhames, like the other provisions of the agreements, would not come into effect until the agreements are ratified.

3. The French point of view is that the National Assembly cannot be expected to ratify until the atmosphere of Libyan-French relations is greatly improved, particularly in two respects: control of arms traffic through Libya into Algeria, and delimitation of the Algerian-Libyan frontier. On the former, there has recently been some improvement. Towards the end of August the Tripoli customs seized, and invited the French Legation to inspect, about ten tons of arms which had come from Hamburg in the s.s. GERTRUDE, disguised as agricultural equipment, etc. These were first-class modern arms, and included a number of rifles of Polish manufacture. The French Government have raised the matter with the Federal German Government. The French Minister believes that larger quantities are being landed at Zuara, and has asked the Libyans to investigate, but Zuara is a Berber district, and control is difficult. The Minister is also inclined to be suspicious about the arms actually seized in Tripoli; there is no guarantee that they will not ultimately find their way to Algeria.

4. As for the delimitation of the frontier, the Libyans originally seemed as keen on this as the French, but were unable to find any suitable Swiss experts as neutral arbitrators in time to start work before the hot weather. When the Libyan Prime Minister got back from Turkey a few weeks ago he said that everything had been arranged, and the delimitation could start on September 20. But the French Legation have just been told by the Ministry of Foreign Affairs that there must be another postponement, as the Libyans have still not found any Swiss experts. The Libyans are certainly being as difficult as the French, and doing nothing to create the atmosphere in which ratification in Paris might become possible.

5. Nevertheless, if the French just hang on, it will be the end of any position, cultural or other, they might have hoped to retain here. The Libyans will certainly take the matter to the United Nations, and may conceivably evict the French by force. My poor French colleague has been trying to persuade his government that there is nothing to be gained by keeping their troops in the Fezzan. They do nothing to control arms traffic, and the sooner they leave the better. But he has small hopes that Paris will heed him.

J.H.A. Watson Esq.,
African Department,
Foreign Office,
LONDON, S.W.1.

/ 6. .....

6. I have not had the full story of the French Consular Agent in Sebha, but apparently some of the Egyptian officials there cooked up a case against him, and to avoid his having to appear in court the Minister has sent him on leave sine die. This is only one of a number of pinpricks that the French have suffered lately. The boycott of their National Day reception was the most striking. Three Frenchmen working for the United Nations here have been asked to leave, on various grounds, but in fact obviously simply because they are French. The Customs at the airport went out of their way to make unpleasantness for the Minister's daughter, who was travelling on a diplomatic passport and was seen off by her parents, when she left for France recently.

7. Before the Franco-Libyan Agreement was initialled, I had been afraid of a deterioration of relations between the two countries that would not only be bad in itself, but might have a bad effect on our own position; as to the Arab mind all Western powers tend to be tarred with much the same brush. In that respect the position is now much worse than it was then, as the Suez crisis has so very closely linked Britain and France in the eyes of the Arab world. It has become more than ever a British interest to avoid a Franco-Libyan breach. If there is anything we can do to persuade the French to ratify the agreements, or to evacuate the Fezzan in anticipation of ratification, it will be very much worth while.

8. I am sending copies of this letter to H.M. Representatives at Paris, Bonn, Cairo, Tunis, Benghazi and to the Political Officer, Middle East Forces, Nicosia.

Yours ever

Walter Graham

ONFIDENTIAL

No. 173

1038/56)

T10317/32

British Embassy in Libya,
TRIPOLI.
December 8, 1956.

JT10317/18

Sir,

With reference to Sir Gladwyn Jebb's telegram no. 431 Saving of November 23 I have the honour to report that a ceremony was held at Sebha on December 1st to mark the withdrawal of the French forces from the Fezzan.

2. The French flag was lowered from the fort at Sebha for the last time on the evening of November 30. Next morning the French Minister here flew to Sebha with the Libyan Prime Minister and other notables. Shortly before 11 o'clock the French Minister formally surrendered the citadel to the Prime Minister, and the Libyan flag was raised at eleven, to the sound of the Libyan national anthem. The French Minister informs me that the ceremony was conducted with dignity, and that the Libyan police took care to prevent any anti-French demonstrations that might have been organized by Egyptian agents. The last French troops left the remaining forts in the Fezzan, Ghadames, Ghat and Derg, by December 5.

3. The newspaper AL RA'ED carried an article on December 1st alleging that the French had done a great deal of damage in Sebha before withdrawing, including the destruction of the water and electric installations. According to the French Minister this is a wild exaggeration of the facts, which are that the commandant did remove from the fort such articles as baths and washbasins which appeared on his inventories as French Government property. He was no doubt within his rights in doing this, but the Minister considers he was unwise, and the French are prepared in principle to pay compensation for the damage done in removing such fittings.

/4. .....

The Right Honourable
Selwyn Lloyd, C.B.E., M.P.,
etc., etc., etc.,
Foreign Office,
LONDON, S.W.1.

4. During this last week great progress has been made in delimiting on maps the Libyan-Algerian frontier between Ghat and Ghadames. The suspected existence of oil in this area has made the question one of great importance, but it appears that an agreement has now been reached, based on the Franco-Italian Treaty of 1919. The French Minister considers that this Treaty was unduly favourable to the Italians, but is not dissatisfied with the present agreement. He admits that the Libyans have behaved "correctly" throughout the whole of this question. The actual marking of the frontier may take many months, but now that it has been clearly shown on a map he does not think that it should cause serious difficulty.

5. I am sending copies of this despatch to Her Majesty's Representatives at Paris, Washington, Algiers and Benghazi.

I have the honour to be,
with the highest respect,
Sir,
Your obedient Servant,

J.

CONFIDENTIAL
No. 15
(1010/57)

British Embassy in Libya,
TRIPOLI.
January 22, 1957.

JT1011/1.

JT1011/1

Sir,

With reference to my despatch No. 6 of January 7, 1956, I have the honour to transmit an annual report for Libya for 1956, together with a calendar of the principal events of the year.

LIBYA STILL AT THE CROSSROADS

2. At the end of 1956 it seemed that Libya might have come to a decisive crossroads in her history, where she must choose whether to continue along the path of co-operation with the West, or take the more tempting but far less clearly mapped road leading to Cairo and perhaps Moscow. In fact, after an eventful year, Libya is still standing at the crossroads, where indeed she may perhaps be destined to remain for a long while, waiting (not unrewarded) for something to turn up. That not even the excitements of Suez pushed Libya wholly into the Egyptian camp is proof of the value attached, by the responsible leaders of the country, to the Western connexion, as well as of their fear of Egyptian ambitions. Among the population in general, at least in Tripolitania, pro-Egyptian and pro-Russian feelings have probably strengthened during the year. The press, although government-controlled, was decidedly less neutral than government policy should have required, and must have played its part in stimulating popular support for Egypt and Russia.

FOREIGN RELATIONS

3. The West, that is to say mainly Britain and America, is valued by the Libyan Government largely as a source of material aid, and efforts have been made by every means, including threats of turning to the East, to increase this aid. Britain's

/popularity .....

The Right Honourable
Selwyn Lloyd, C.B.E., M.P.,
etc., etc., etc.,
Foreign Office,
LONDON, S.W.1.

popularity has been on the downgrade since the "nationalisation" of the Suez Canal, and still more since the Anglo-French intervention in Egypt, and American popularity has risen correspondingly. American-Libyan relations, which were definitely bad a year ago, are now perhaps more cordial than ever before.

4. In June the Libyan Prime Minister, Mustapha bin Halim, paid a visit to London to seek increased financial assistance. He had previously taken advantage of your brief visit to Tripoli in March to request help in meeting an expected deficit in the Libyan budget over the next two years, and in June he pressed this request, as well as a plea for assistance in increasing the size of the Libyan armed forces. Her Majesty's Government agreed to increase their financial aid by a quarter of a million pounds in the next financial year, and half a million in the following year, subject to their being satisfied of the genuine existence of a deficit, as to which the Treasury had doubts. Promises were also made to assist in the expansion of the Army, and to look into the question of a Navy, but no encouragement was given to the plan to start an Air Force. Before the end of the year bin Halim had succeeded in evading the Treasury's claim to make payment of the extra subsidy dependent on an examination of the Libyan budget, but no real progress had been made in the expansion of the armed forces. Even an American undertaking to equip an extra thousand men remained unfulfilled.

5. At the outbreak of the Suez crisis the Libyan Government asked for, and received, assurances that Her Majesty's Government had no intention of using the bases in Libya in any action against Egypt; but although the Prime Minister admitted in Parliament that Britain had scrupulously honoured this undertaking he later requested a revision of the Anglo-Libyan Treaty, including a strengthening of the clauses prohibiting any use of the bases incompatible with

/Libya's .....

long and intimate connexion with Libya had made his presence in some ways distasteful to certain members of the Government.

9. Relations with France were bad throughout the year, principally on account of the Algerian question, and as early as July 14 led to a boycott by all Libyan officials except a minimum from the Ministry of Foreign Affairs of the French Minister's National Day reception. The French arrest of the five Algerian leaders, and the Anglo-French intervention in Egypt, naturally caused a further deterioration, but did not lead to a rupture of diplomatic relations. This unfavourable atmosphere delayed French ratification of the Franco-Libyan Agreement of August, 1955, under which the French were to withdraw the last of their troops from the Fezzan by November 30, 1956; and until almost the last moment it appeared that they might refuse to do so. Fortunately, however, wiser counsels prevailed, and a ceremony was held in Sebha on December 1 to mark the departure of the French. Since then agreement has been reached on the demarcation of the Libyan-Algerian border between Ghat and Ghadames, which is of more importance than most desert frontiers owing to the suspected existence of oil.

10. In the autumn Libya also finally concluded an agreement with Italy, regulating the position both of the numerous Italians remaining in Tripolitania and of some disputed "para-Statal" property. Under this agreement Italy is to make a financial contribution to the Libyan economy.

11. The staff of the Soviet Embassy, which was opened only a year ago, grew rapidly and was active in the social and cultural fields. Without achieving any spectacular success they almost certainly laid the foundations for the spread of their doctrines both in Tripoli and outside.

INTERNAL AFFAIRS

12. General elections were held throughout Libya in January. No political parties are allowed, but the great majority of the

/successful .....

CONFIDENTIAL

FROM PARIS TO FOREIGN OFFICE

J J

Cypher/OTT

FOREIGN OFFICE AND WHITEHALL DISTRIBUTION

Sir G. Jebb
No.251
October 8, 1957.

D.6.00 p.m. October 8, 1957.
R.7.05 p.m. October 8, 1957.

PRIORITY
CONFIDENTIAL

Addressed to Foreign Office telegram No.251 of October 8.

Repeated for information to: Tripoli
And Saving to: Algiers P.O.M.E.F. U.K.Del. New York
Benghazi Washington

Tripoli telegram No.393: Fezzan. TT 1701/50

The Director of Africa/Levant this morning gave the Minister a note (translation in my ~~immediately~~ following telegram) in reply to that contained in your telegram No.1381.

2. It will be seen that the attack is described as having taken place at Tin Nabor: M. Sebilleau explained, in strict confidence, that Tin Beibe was incontestably on the Libyan side of where the frontie. could reasonably be supposed to lie. According to the Franco-Italian agreement the frontier was to allow the Italians access from Fewet to the south, and must therefore be presumed to pass to the west of the road which runs south between Tin Beibe on the east and Tin Nabor on the west. M. Sebilleau said that the fighting no doubt began on the west side of the road and continued across it to the east.

3. M. Sebilleau said that the necessary instructions had this morning been telegraphed to the French Ambassador at Tripoli.

4. The Minister enquired whether reports in today's Daily Telegraph that French reinforcements had been flown to Fort Polignac near the Libyan frontier were correct. M. Sebilleau said this was so; Polignac was, however, a long way to the north-west of Ghat and was a fort covering the Edjele area where the French had reason to fear trouble. According to their information the F.L.N. had been successfully bribing the local Touregs, whom the French had hitherto similarly been able to keep sweet.

/5.

CONFIDENTIAL

CONFIDENTIAL

Paris telegram No.251 to Foreign Office

-2-

5. M. Sebilleau expressed gratitude for part played by Her Majesty's Government in this affair, which he considered to be satisfactorily settled.

6. See my immediately following telegram.

Foreign Office please pass routine to Tripoli and Saving to Algiers, P.O.M.E.F., U.K.Del. New York, Benghazi and Washington as my telegrams Nos. 10, 95, 14, 81, 9 and 229 respectively.

[Repeated to Tripoli, and Saving to Algiers, P.O.M.E.F., U.K.Del. New York, Benghazi and Washington].

TTTT

CONFIDENTIAL

JT 1221/556 LIBYA: VOLUME CONFIDENTIAL

Oct. 9 1957

Fezzan-Algerian Frontier

1201

JT1221/58 (A)

CONFIDENTIAL

FROM PARIS TO FOREIGN OFFICE

Cypher/OTP.

FOREIGN OFFICE AND
WHITEHALL DISTRIBUTION

Sir G. Jebb
No: 252
October 8, 1957.

D: 7.07 p.m. October 8, 1957.
R: 7.17 p.m. October 8, 1957.

PRIORITY
CONFIDENTIAL

Addressed to Foreign Office telegram No: 252 of October 8

Repeated for information to:	Tripoli.	
and Saving to:	Algiers.	P.O.M.E.F..
U.K.Del. New York.	Benghazi.	Washington.

My immediately preceding telegram.

Following is translation of text.

The Minister [sic] of Foreign Affairs present their compliments to the British Embassy and have the honour to state, in reply to the Embassy's Note No: 179 of 5th October, the circumstances in which there occurred on the 3rd October in the region to the south of Ghat, a Franco-Libyan incident the causes of which must be sought in the presence of groups of Algerian rebels installed in this area, and in the imprecise nature of the frontier between the two countries.

2. The French reconnaissance forces involved in this affair, which consisted of only 25 infantrymen escorted by a platoon of Bren carriers, was attacked at Tin Nabor in French territory by Algerian rebels in uniform. The counter-attack of our troops was continued to the south of Hill 750 in the immediate neighbourhood of the track from Ghat to Tin Alkoum. At the end of this engagement three French aircraft summoned by wireless, intervened, and the irregulars, who had come from Libya, withdrew northwards. It goes without saying that the French detachment immediately returned to its base at Tin Alkoum.

3. The Libyan Government have proposed to our Ambassador in Tripoli the constitution of a mixed commission

charged.....

CONFIDENTIAL

CONFIDENTIAL

Paris telegram No: 252 to Foreign Office

- 2 -

charged with the elucidation of this affair and the prevention of the recurrence of similar incidents. The commission should also enquire into the conditions under which there took place two weeks ago in a neighbouring area the burning of two French civilian lorries.

4. The French Government have just made known their acceptance of this proposal but have proposed in return to the Libyan Government, that this commission should be charged with the delimitation of the frontier to the south and east of Ghat.

5. The French Government have, at the same time, reminded the Libyan Government of the necessity of proceeding with the complete delimitation of the Franco-Libyan frontier as rapidly as possible from Ghadames to Toummo and up to the Sudanese border.

6. Finally, the French Government have requested the Libyan Government to disperse immediately the groups of Algerian rebels installed in the frontier area.

Foreign Office please pass to Tripoli and Saving to Algiers, P.O.M.E.F., U.K.Del. New York, Benghazi and Washington as my telegrams Nos: 11, 96, 15, 82, 10 and 230 respectively.

[Repeated to Tripoli and Saving to Algiers,
P.O.M.E.F., U.K.Del. New York, Benghazi and
Washington].

JJJJJ

CONFIDENTIAL

THE FEZZAN-ALGERIAN FRONTIER

Chronology of Events as learnt by us

Tripoli tels.333 336 and 338. On September 9 the Libyan Government sent an armed column, about a battalion in strength, into the Fezzan to be disposed as follows:-

Sebha - 350 to 400 men.
Ghat(=Rha) - 150 men.
Gadames - (no change) 20 men.

The Libyans said that this was in order to control the local Wali, who from time to time had shown independence of the Central Government. The Libyan Government carried out a similar exercise last year.

Paris tel.2708 2. Her Majesty's Embassy in Paris informed the Quai d'Orsay of this development on September 12. The French were not surprised. They referred to a Libyan press article of September 5 reporting a concentration of French troops near the frontier. They thought the Libyan Government were preparing for mischief, and that there was a likelihood of Algerian rebel bands operating from Libyan territory in the area.

Tripoli tel 341. 3. It is evident from a subsequent report which reached our Embassy in Tripoli that the Libyan troop movements were in fact inspired by their belief that the French had reinforced Fort Charlet on the Algerian side of the frontier· and by the Libyan Government's belief that the Algerian liberation army intended to establish a base in Ghat. It is not clear whether the Libyans wished to help or hinder the latter development.

Tripoli tel.345 4. On September 14 the French Ambassador in Tripoli informed Her Majesty's Ambassador that he had reliable information that about 100 Algerian rebels who had been in training on Libyan territory near Sebha had now arrived at the frontier area near Ghat. From there he thought they could launch an attack on communications with the Edjele area in which the French had recently struck oil.

Paris tel.2868. 5. On September 20 the French press reported that two French civilian lorries had been found burned out in Libyan territory near Ghat, and that their crews had presumably been killed. The lorries, which were unarmed and carried supplies, were on Libyan territory with the agreement of the Libyan Government. (French military supply vehicles are permitted to take the route through Ghat to reach posts in the Algerian Sahara.) The French were convinced

/that

that the attack was the work of the band of Algerian rebels who had recently arrived in the area. The Quai d'Orsay informed our Embassy in Paris that the French military authorities on the spot were justifiably indignant and might well react violently if the opportunity occurred. Instructions not to cross the frontier still stood: but the frontier was uncertain.

Algiers tel.No.51. 6. On September 21 Her Majesty's Consul-General in Algiers reported that when he had spoken to General Quenard, G.O.C. Southern Sahara, of an impending visit to the Sahara by Her Majesty's Ambassador in Paris, the General had said that in present circumstances he thought the visit should be postponed; feeling in the Sahara was very strong and he had heard that a British unit had moved into the area of Sebha; if so, this would be in breach of the Franco-Libyan Treaty for the evacuation of the Fezzan. He added that in view of the growing complicity of Libya in the Algerian rebellion he was expecting orders "to attack Libya at any time".

Algiers tel.No.53. 7. The French subsequently enquired about the presence of British troops in the area of Sebha. In fact there were no such troops. A Cambridge University Archaeological Expedition travelling in British army trucks with military drivers had passed through the area and we assumed that this was the basis of the French story. General Quenard was told this on September 26. He admitted that he had based himself on misleading reports.

F.O.tel.1558 to Paris. 8. On September 27 the French Embassy in London told us that the French Government had requested the Libyan Government to disarm and remove forthwith from the Algerian-Fezzan border the band of rebels stationed at the oasis of Fewet near Ghat. On September 30 the

Paris tel.2938. Quai d'Orsay told our Embassy in Paris that the Libyan Government had acceded to the French request.

Algiers tel.No.54. 9. On October 1 Her Majesty's Consul-General in Algiers reported that General Quenard had just returned from a tour in the Sahara and that his attitude was "transformed". He was most grateful for our cooperation, and spoke of the "statesmen like attitude" of the King of Libya, which he thought would put an end to trouble on the frontier. He now welcomed the visit by Her Majesty's Ambassador.

/Paris

CONFIDENTIAL

Paris tel. 297B

10. On October 2, on instructions, Her Majesty's Minister in Paris reminded the Quai d'Orsay of the Anglo-Libyan Alliance. The French said that their military had been given most categorical instructions that they were not to cross the Libyan frontier.

Tripoli tel. No.385

11. On October 3, the Libyan Prime Minister informed Her Majesty's Ambassador in Tripoli that at 9 o'clock that morning, the French had crossed the frontier with air and ground forces and had attacked and occupied the village of el Seyin south of Ghat. The Libyan Prime Minister also requested "military assistance in accordance with the Treaty obligations" and support in the Security Council, where Libya intended to raise the matter immediately.

Paris tels.249 and 250.

12. On October 4 Her Majesty's Embassy in Paris made oral and written representations to the French Government reminding them of our Treaty with Libya, and expressing the hope that if any troops had crossed the frontier they would be promptly withdrawn. The French asserted that the incident had begun on the Algerian side of the frontier; that the Libyans had fired first; and that the root cause of the incident had been the presence in Libya of Algerian rebels. (The Libyan Government has denied that there are any Algerians in the area).

Tripoli tel. 391

13. On October 5 the Quai d'Orsay assured our Embassy in Paris that prompt measures would be taken to ensure that the French forces withdrew. On the same day the Libyan Government issued a communiqué saying that the attacking forces had in fact withdrawn at the end of the engagement. In the meantime, the Libyan Minister of Defence flew to the Fezzan on October 5 and on October 7 summoned the entire available front line reserve of the Libyan army to move to the Fezzan.

Tripoli tel. 390.

Tripoli tel. 392

Paris tels. 251/2

14. On October 5 the Libyans proposed a Franco-Libyan commission to investigate and define the frontier in this area; the French have accepted. They told Her Majesty's Minister in Paris in confidence on October 8 that French troops had evidently crossed the frontier in the course of a running battle, but had withdrawn to their base on Algerian soil immediately the action was broken off.

African Department,
October 10, 1957.

CONFIDENTIAL

CONFIDENTIAL

U. K. of Libya
Ministry of Foreign
Affairs
Tripoli October 10,1957.

Your Excellency,

I refer to the conversation between the Prime Minister and yourself, in my presence, about the incident of the French attack on the village of Asin on October 3, 1957, and I have the honour to express once more to Your Excellency the anxiety which besets the Libyan Government at the present time because of the likelihood that the French forces will mount a new attack on Libyan territory. Libyan observers have discerned the presence of large French troops concentrations on the South-Western frontiers of Libya. The Libyan Government cannot remain undisturbed at this state of affairs which has given rise to extreme tension, and see fit to inform Your Excellency that they await an assurance from the British Government of their readiness to put into effect Article II of the Treaty of Friendship and Alliance concluded between our two countries, and especially the last clause in which it is stated that "in the event of an imminent menace of hostilities involving either of the High Contracting Parties they will immediately concert together the necessary measures of defence".

In expectation of Your Excellency's reply, please accept my respects etc...

WAHDI AL-BURI

CONFIDENTIAL

CONFIDENTIAL

FROM TRIPOLI TO FOREIGN OFFICE

J

Cypher/OTP

Mr. Graham

FOREIGN OFFICE AND WHITEHALL
DISTRIBUTION

No. 403
October 11, 1957

D. 2.36 p.m. October 11, 1957
R. 4.10 p.m. October 11, 1957

CONFIDENTIAL

Addressed to Foreign Office telegram No. 403 of October 11.

Repeated for information to Algiers
Paris
POMEF
and Saving to Benghazi UKDEL New York
Washington

JT 1201/48

My telegram No. 385: Franco-Libyan clash in Fezzan.

I have recieved letter from the Libyan Minister for Foreign Affairs referring to this conversation and stating that the Libyan Government fears a new French attack on Libyan territory. Libyan Government therefore "awaits an assurance from Her Majesty's Government of their readiness to put into effect Article 2" of the Anglo-Libyan Treaty, and especially the last sentence. Text follows by bag.

2. I request instructions. I hope the French can give us assurance that in fact there is no danger of "imminent hostilities", but I fear Libyans may plan to make propaganda use of our reply unless it is phrased to prevent this.

Foreign Office pass Algiers, Paris, POMEF and Saving to UKDEL New York and Washington as my telegrams Nos. 8, 18, 93, 13 and 44 respectively.

[Repeated to Algiers, Paris, POMEF and Saving to UKDEL New York and Washington.]

nnnnn

12 OCT 1957

CONFIDENTIAL

CONFIDENTIAL

INWARD SAVING TELEGRAM

FROM PARIS TO FOREIGN OFFICE

J

FOREIGN OFFICE AND WHITEHALL DISTRIBUTION

By Bag.

Sir G. Jebb

No. 305 Saving

October 10, 1957

R: October 11, 1957

CONFIDENTIAL

Addressed to Foreign Office telegram No. 305 Saving of October 10
Repeated for information Saving to:

Algiers
POMEF
UKDEL New York

Benghazi
Washington

and Routine to Tripoli No. 12.

57 1201/56

My telegram No. 252 [of October 8] Fezzan.

Director of Africa/Levant summoned the Minister to-day and showed him a telegram from the French Ambassador in Tripoli saying that despite the Libyan Government's assurances, the Algerian rebels were still at Fewet where five hundred of them were encamped in the school. More were coming in in small groups daily with Tunisian passports. Moreover, armed Tuaregs were assembling in Ghat and forming commando groups. The Wali of Sebka (a French stooge) thought further trouble inevitable.

2. M. Sebilleau said that French Government would be grateful for anything we could do to get these rebels moved to a less sensitive area.

3. He added that an Arabic wireless station called "Algérie secur" had been monitored on October 6 as announcing that patriot forces had attacked (sic) a military convoy on the Libyan frontier and, after a prolonged battle, had inflicted considerable losses on the colonialist forces. The French considered this a damaging admission.

Foreign Office please pass Routine to Tripoli as my telegram No. 12

[Repeated to Tripoli].

CONFIDENTIAL

JT1201/60

CONFIDENTIAL

FROM TRIPOLI TO FOREIGN OFFICE

Cypher/OTP

FOREIGN OFFICE AND WHITEHALL DISTRIBUTION

Mr. Graham

No. 409
October 14, 1957.

D. 10.20 a.m. October 14, 1957.
R. 10.46 a.m. October 14, 1957.

PRIORITY
CONFIDENTIAL

Addressed to Foreign Office telegram No. 409 of October 14.
Repeated for information to Paris
and Saving to Algiers
P.O.M.E.F.
Washington.
Benghazi
New York (UKDel)

JT 1201/57

Paris telegram No. 305 Saving: Fezzan.

According to the French Embassy here the figures in paragraph 1 are exaggerated - probably by mistakes in cyphering. They do not believe that there are more than a maximum of 150 men at F and no more than 300 in the whole area. This is not to belittle the gravity of the situation since the French are convinced the Libyans have done nothing to implement the undertakings in my telegram No. 377. The French have, therefore, reinforced the garrisons not only at Fort Polignac but in the whole area. The French Embassy believe that the situation is passing out of the control of the Federal Government and that pro-Egyptian elements in Fezzan are deliberately making North African trouble.

2. It might be useful if I urged the Libyans not to magnify the importance of the October 3 incident to disperse the rebels (the French Ambassador has sensibly suggested to the Libyan Government declaration of state of seige in Fezzan under Military Commander resphnsible only to the Federal Government) but I think that this would have to be accompanied by a categorical and public French assurance that they have no intention of violating Libyan sovereignty. The French Ambassador here thinks this so obvious that it needs no emphasising, but as Libyan diplomatic moves are being taken largely for publicity, something public is needed from the French side. And there are also General Que[grp. undec.]'s remarks (Algiers telegram No. 15 to Paris).

/Foreign Office

CONFIDENTIAL

15 OCT 1957

CONFIDENTIAL

Tripoli telegram No. 409 to Foreign Office

- 2 -

Foreign Office please pass to Paris and Saving to Algiers, P.O.M.E.F., New York (UKDel), Washington as my telegrams Nos. 19, 12, 39, 15 and 47 respectively.

[Repeated to Paris and Saving to Algiers, P.O.M.E.F., New York (UKDel) and Washington].

sssss

CONFIDENTIAL

Egypt.

JE1201/66 J

CONFIDENTIAL

1038/57)

British Embassy in Libya,
TRIPOLI.

October 15, 1957.

My dear Adam, JT1201/60

There have been a few new developments in the Franco-Libyan situation since my telegram no. 409 of yesterday.

2. I called on the Minister for Foreign Affairs to discuss another subject shortly after we had despatched our telegram and he naturally enquired about the fate of his Note of October 10 reminding Her Majesty's Government of their obligations under the Treaty. I said I had transmitted it to you with a request for instructions and went on, speaking personally, to make the points in the first sentence of paragraph 2 of my telegram no. 409. The Minister for Foreign Affairs of course denied that there were more than a handful of rebels in the frontier area and seemed generally a little disappointed that I was not more forthcoming. For my part I tried to convince him that the idea that France would "invade" the Fezzan was nonsense. It now appears that the Minister was being disingenuous and that the Libyan Government are perfectly aware of the numbers of rebels near Ghat and are very exercised about them. They also know now how the incident of October 3 was staged (the Libyan detachment into which the French pursuing forces ran that day had in fact been sent forward without the knowledge of the Libyan High Command), and the French have also picked up a telegram from the rebel headquarters in Ghat to Tripoli triumphing over the destruction of the two French lorries and the murder of their civilian crews on September 16. No doubt the Government were perfectly aware of this, although they continue silent about it.

3. Nevertheless there are some grounds for optimism that the Federal Government will now make a determined effort to reassert their authority. The French Ambassador has been informed, by one of those present, of what passed at a Cabinet meeting held a few days ago to consider the situation. He understands that the (Iraqi) Chief of Libyan General Staff was there and I daresay he was responsible in the first place for suggesting the decisions which were taken. These were:-

(a) to concentrate all civilian and military powers in the hands of the Libyan Army High Command in the Fezzan;

(b) to compel the Mutasarrif of Ghat, one of the principal troublemakers, to stay in Sebha, hundreds of miles away from the frontier;

(c) to surround the rebels in their base at Feuat;

(d) to reinforce patrols on the frontiers of both Tunisia and Algeria (there have been one or two attacks on United States oil companies' convoys further north);

(e) to disarm the Tuaregs in the Ghat area;

(f) perhaps most important, to issue a solemn warning to the F.L.N. command that unless they withdrew their forces from Ghat Libya would cease its financial, material and moral support.

J.H.A. Watson Esq., Ee
Foreign Office,
LONDON, S.W.1.

/4 .....

CONFIDENTIAL

4. Assuming that this report is accurate, it still remains to be seen how energetically these decisions will be carried out. It is however encouraging that they should have been taken without a dissentient voice; that the most dangerous person involved, the young Seif al Nasr, the effective head of the government of the Fezzan, should be still kept in Tripoli; and that the C.G.S. of whose good sense and good intentions the French Ambassador is convinced, should carry so much weight with the Libyan Cabinet.

5. On the other hand, it is more than possible that the Federal Government will not be able to live up to these good intentions. Seif al Nasr has powerful friends in the Palace and elsewhere. Should they gain the upper hand and the rebels be left where they are, we must expect further incidents on the frontier. It looks as if the French are already in a fighting mood. The High Command in Algiers, so the French Ambassador informs us, are resolved to prevent the creation of yet another front, and they will not hesitate to pursue the rebels who attack across the frontier back into Libya. Christopher Gandy, who had a long talk with the French Ambassador today, tried to suggest that, since there appeared to be some goodwill on the Libyan side, everything should be done to encourage it, and wondered whether a policy of vigorous pursuit of rebel bands by the French, quite apart from the embarrassing situation in which Her Majesty's Government would be placed, would really help the French. The Ambassador, though reiterating that there was no intention of opening hostilities against Libya, could hold out no hope that pursuit across the frontier could be avoided in the event of further attacks based on Libya. He said bluntly that he thought we should tell the Libyans not to count on our support.

6. In view of the apparently correct attitude of the Libyan Army and particularly its senior officer, the Iraqi C.G.S., Gandy thought it wise to inform the Ambassador à titre personnel, of the request put to us a long time ago for supplies for the Fezzanese expedition (your telegram no. 390 of September 11th), since we believe that we may shortly receive this request in an official form from the Ministry of Foreign Affairs. Gandy suggested to the Ambassador that it would be in everyone's interest to meet this request as far as possible, since the Libyan Army clearly should be encouraged. The French did not really demur over this, although of course they had to issue a caution about the political difficulties which would ensue should the material eventually find its way into rebel hands. Gandy asked the French Ambassador not to report this information home for the time being, but I think it would be as well to let the French Foreign Office or the Embassy in London know of it as soon as possible.

7. I am sending copies of this letter to Paris, Algiers, Benghazi, Pomef, Washington and UKDEL New York.

Yours ever

Walter Graham

SECRET

Copy of Minute dated October 16, 1957

M. Beaudouin asked me to call this afternoon to show me, on M. Sébilleau's instructions, two telegrams that the Quai had just received from their Embassy in Tripoli. The telegrams are also being shown to the Americans.

2. The first telegram said that various indications, including the embarrassment of the Libyan Ministry of Foreign Affairs, had suggested that the Franco-Libyan skirmish of October 3 had been stage-managed by Algerian rebels, with the assistance of some regular Libyan troops, but without the knowledge of the Libyan High Command.

3. The Algerian rebels, according to this reconstruction of events, had attacked the French on the Algerian side of the frontier and had then fallen back into Libya where the pursuing French were decoyed into a brush with Libyan soldiers, who had been previously prepared. In other words the affair was a kind of ambush.

4. The second telegram said that the anarchy and confusion near Ghat were extended up the frontier to Ghadames. Supply lorries belonging to American Oil Companies had been attacked by Toureg bands near Derj (not far from Ghadames). According to a Libyan Minister the Federal Government had decided on the following steps:-

(a) concentration of all civil and military powers in the area in the Army Commander at Ghat;

(b) the removal of the residence of the Civil Governor of Ghat to Sebha;

(c) the encirclement of the Algerian rebel bands by the Libyan Army;

(d) strengthening of control on the Tunisian and Egyptian frontiers;

(e) a warning to the F.L.N. to withdraw their forces from Libyan territory; if disregarded this would lead to a withdrawal of Libyan support ("popular, financial, material and moral") for the F.L.N.;

(f) disarming of the Toureg.

5. M. Beaudouin commented that these telegrams were encouraging, in that they showed that the Libyan Government and High Command were not behind the troubles on the frontier and indeed were determined to do what they could to keep them in hand.

(R. S. Faber)

SECRET

CONFIDENTIAL

FROM FOREIGN OFFICE TO PARIS

Cypher/OTP and by bag | FOREIGN OFFICE AND WHITEHALL DISTRIBUTION

No.1661
October 18, 1957. | D.5.20 p.m. October 18, 1957.

CONFIDENTIAL

Addressed to Paris telegram No.1661 of October 18,

Repeated for information to: Tripoli Algiers Washington
and Saving to: Benghazi No.356 P.O.M.E.F. No.908
U.K.Del. New York No.1612

My telegram to Tripoli No.503: Fezzan.

Please inform the French Government that I am much concerned at the situation on the frontier revealed by your telegram No.305 Saving and Tripoli telegrams Nos.403 and 409; and inform them of the terms in which Her Majesty's Ambassador in Libya will speak to the Libyan Government, as set out in my telegram under reference.

2. You should then urge upon them the need for the greatest restraint and effective control of the French frontier forces. The early despatch to the frontier of the mixed commission would also have a calming influence and provide an additional incentive to the Libyan Government to disperse any Algerian concentrations there may be.

3. I hope the French are in a position to give the necessary instructions about military activities and a mixed commission. If the situation is not eased we shall be faced with increasing pressure from the Libyans for formal assurances under the Anglo-Libyan Treaty.

4. We are taking action with the French Embassy here in the sense requested in paragraph 6 of Mr; Graham's letter 1038/57 of October 15 to Mr. Watson. You may wish to do the same in Paris.

TTTT

CONFIDENTIAL

BRITISH EMBASSY IN LIBYA,
BENGHAZI

(1034/54/57)

October 22, 1957.

CONFIDENTIAL

I ran into the Iraqi Chief of Staff of the Libyan Army on October 20. He was waiting in the Prime Minister's outer office for what, I think, was a meeting on the Fezzan situation. He had just returned from the frontier area and was full of it. The following interesting facts emerged.

2. The two Libyan soldiers had been wounded by machine gun fire from the air. Fire was returned by the Libyans but he did not claim that the aircraft had been damaged. The Libyan Government was not so much interested in the defining out the frontier as in reinforcing their garrison in all the villages and settlements near the frontier known to be indisputedly Libyan.

3. He accused the French of seducing the Libyan Touareg from their allegiance to Libya. These men, who were earning as much as £25 a month from the French, returned on leave to Libya and created trouble. They were also responsible for the false information which the Brigadier said the French possessed on Libya. The French Intelligence Service paid them for information, and the more lurid the description of rebel units training in Libya, the better the payment would be. They were therefore disposed to exaggerate the extent of Libyan co-operation with the rebels.

4. I took the opportunity of hoping that the situation on the border would now remain quiet. I pointed out, however, that reports of armed Algerian bands training in Libya were not reassuring because this invited French reprisals. The Austrians last October, were just as convinced of the right of the Hungarian revolutionaries cause as were the Libyans about Algeria. Prudence and international practice, however, obliged the Austrians to confine their assistance on the frontier to Red Cross help and the receiving of unarmed refugees. However, strongly Libya might feel about events in Algeria, to permit armed bands to use Libya as a sally-port was not a practical proposition, whatever the emotional appeal of the idea might be. I hope this idea may sink in.

5. Of an earlier incident in which a French convoy was burned, the Brigadier said that it was done by the Algerian drivers themselves who wanted to achieve praise from their fellow countrymen by destroying French property.

Yours ever,

(P.D. Stobart)

J.F.S. Phillips, Esq.,
British Embassy in Libya,
Tripoli.

CONFIDENTIAL

CONFIDENTIAL

M.F.

JT 1201/6F

OUTWARD TELEGRAM

En Clair and
By Bag

FROM PARIS TO THE FOREIGN OFFICE

Sir G. Jebb

No. 327 Saving

October 24, 1957

CONFIDENTIAL

Addressed to Foreign Office telegram No. 327 Saving of October 24.
Repeated for information to: Tripoli No. 15

Saving to:	Algiers	No.	112
	POMEF	"	19
	Washington	"	248
	UKDEL New York	"	107

Benghazi telegram No. 140 [of October 23]. Fezzan.

Director of Africa/ Levant said today that he had as promised (paragraph 2 of my telegram No. 317 Saving) spoken to the military authorities who had issued the most categorical instructions that the frontier was to be respected and everything done to avoid incidents. He must, however, point out that in a critical area the frontier was still not de-limited and that the absence of such de-limitation contributed to the possibility of incidents. He must, therefore, repeat urgently the French Government's desire that the Libyan Government should abandon their present dilatory and obstructive attitude (which appears to be confirmed by Benghazi telegram under reference) and take immediate steps to ensure that the mixed commission was set up and proceeded to the de-limitation of the frontier.

2. This request seems eminently reasonable and I hope that Her Majesty's Ambassador at Tripoli may be able to act accordingly.

3. M. Sebilleau had no information as regards reinforcements at Ghadames.

Foreign Office please pass Routine to Tripoli as my telegram No. 15.

CONFIDENTIAL

JT1201/70

CONFIDENTIAL

FROM TRIPOLI TO FOREIGN OFFICE

Cypher/OTP

FOREIGN OFFICE AND WHITEHALL DISTRIBUTION

Mr. Graham
No. 138
October 26, 1957.

D. 3.06 p.m. October 26, 1957.
R. 3.36 p.m. October 26, 1957.

CONFIDENTIAL

Addressed to Foreign Office telegram No. 138 of October 26,
Repeated for information to: P.O.M.E.F.
and Saving to Paris
Benghazi

JT 1201/60

Benghazi telegram No. 140: Fezzan.

The French Ambassador tells me the situation is much improved. The Libyan Army have impounded the arms dump belonging to the Algerian rebels (who have, however, retained their personal arms) and are dispersing the rebels. They are also disarming the Touaregs, who had been armed by the local Fezzanese [gp undec ? authorities]. The French Ambassador has also learned that F.L.N. Headquarters in Tripoli had ordered the rebels in the Ghat area to return to Algeria.

2. Since the Libyan Army is playing a helpful part in this matter, I do not think the French will be concerned if we supply military equipment to the Army.

Foreign Office pass P.O.M.E.F. as my telegram 106.

[Repeated to P.O.M.E.F.]

23 OCT

-0-0-

CONFIDENTIAL

CONFIDENTIAL

British Embassy in Libya,
TRIPOLI.

(1038/57) October 28, 1957.

JT 1201/64

I enclose herewith a letter from me to Dr. Buri about the supply of equipment for the Libyan Army in the Fezzan (Foreign Office telegram no. 526 to me of October 24). Would you please deliver it as soon as possible, and at the same time make the following points:-

(a) The 80%/20% pattern (paragraph 1 of the Foreign Office telegram) and our present financial difficulties.

(b) This equipment is being supplied on the assumption that it will be used for defence and internal security, and not passed on to third parties.

(c) H.M. Government have secured an assurance from the French Government that the French military authorities have been given categorical instructions to respect the Libyan frontier and to do everything to avoid incidents (Paris telegram no. 327 Saving Of October 24).

(d) H.M. Government earnestly hope that the Libyan Government will lose no time in implementing their admirable suggestion, which the French have accepted, for a mixed commission, and that the commission will proceed urgently to delimit the frontier, the uncertainty of which appears to have caused much of the trouble. (Foreign Office telegram no. 531 to me of October 25).

/60

2. Please report results by telegram.

3. I am sending copies of this letter to the African Department, and the Chanceries at Paris, Pomef and Algiers.

(sgd) W.G. Graham.

P.D. Stobart Esq., M.B.E.,
H.M. Acting Consul-General,
BENGHAZI.

WGG/mjm **CONFIDENTIAL**

CONFIDENTIAL

JT1202/7(A)

FROM TRIPOLI TO FOREIGN OFFICE

Cypher/OTP

DEPARTMENTAL
DISTRIBUTION

Mr. Stobart
No. 447 D. 7.49 a.m. November 1, 1957
November 1, 1957 R. 8.43 a.m. November 1, 1957

IMMEDIATE
CONFIDENTIAL

Addressed to Foreign Office telegram No. 447 of November 1,
Repeated for information to Paris

Following received from Benghazi telegram No. 154 of October 31.

Begins.

Your letter of October 28 1038/57: Fezzan. JT1201/7

In the absence of the Minister for Foreign Affairs I saw the Permanent Under-Secretary of State on October 30, and spoke as instructed. I received satisfactory oral assurances about payment and the use to which the equipment would be put.

2. I spoke with great emphasis of the importance which Her Majesty's Government attach to frontier delimitation as a means of preventing incidents, but failed to obtain more than an assurance that this question would be considered. The Permanent Under-Secretary of State argued that the commission would be under unfair pressure as a result of large French concentrations on the western side of the border. I suspect the real reason for the Libyans' reluctance to go ahead is their fear that the commission may get involved in further incidents. They are clearly frightened of the French military. Franco-Libyan relations are now so

/strained

CONFIDENTIAL

1 NOV 57

Reply sent 7/11

CONFIDENTIAL

Tripoli telegram No. 447 to Foreign Office

-2-

strained that there is a clear reluctance to discuss the problem with the French, and, furthermore, there is no direct liaison between French and Libyan frontier posts. Perhaps the French Ambassador at Tripoli could assist by reassuring the Libyans that the commission would not be interfered with.

3. The Under-Secretary of State referred once more to the Libyan Government's desire for an answer to the Minister's communications of October 10 and October 21 about Article 2 of the treaty.

4. I will telegraph as soon as written reply to Her Majesty's Ambassador's letter of October 28 is received.

Ends.
Foreign Office please repeat Immediate to Paris.

[Repeated to Paris].

DISTRIBUTED TO:	ADVANCE COPIES:
African Department	Private Secretary
Western Department	Sir F. Hoyer Millar
News Department	Mr. Ross
	Head of African Department

7777777

CONFIDENTIAL

CONFIDENTIAL

FROM FOREIGN OFFICE TO TRIPOLI

Cypher/OTP and By Bag DEPARTMENTAL DISTRIBUTION

No. 544
November 2, 1957 D: 2.25 p.m. November 2, 1957

PRIORITY
CONFIDENTIAL

Addressed to Tripoli telegram No. 544 of November 2
Repeated for information Saving to Benghazi No. 388
Paris No. 3067, BCMEF No. 952.

Your telegram No. 447 [of November 1: Fezzan.]

According to the Libyan Embassy here the Libyan Government fear that if they engage in negotiations over the frontier they will be subject to Arab criticism. This explains their reluctance to agree to a mixed commission specifically appointed to discuss the frontier.

2. The main value of a Commission is that by its presence in the area it will have a calming influence and make incidents less likely. This is the point to urge upon the Libyan Government rather than the more doubtful argument that an early delimitation of the frontier would remove friction.

3. Would it not be possible to devise suitably vague terms of reference? For example, "to examine the situation in the area including questions relating to the frontier" without charging the Commission specifically to negotiate.

DISTRIBUTED TO:

African Department
Western Department

bbbbb

CONFIDENTIAL

CONFIDENTIAL

FROM BENGHAZI TO FOREIGN OFFICE JT 1201/71 (5)

Cypher/OTP

DEPARTMENTAL DISTRIBUTION

Mr. Stobart

No. 159
November 13, 1957

D: 3.13 p.m. November 13, 1957
R: 3.25 p.m. November 13, 1957

CONFIDENTIAL

Addressed to Tripoli telegram No. 169 of November 13
Repeated for information to Foreign Office
and Saving to Paris P.O.M.E.F.

JT 1201/71

Your telegram No. 153 to Foreign Office: FEZZAN.

The French Ambassador tells me that the Libyans have now agreed to the Mixed Commission assembling on November 16 to investigate the incident of October 3 only. He has replied to the Minister for Foreign Affairs requesting that the Commissions' terms of reference should also include incident of September 16 and frontier demarcation.

2. Whilst gratified by the measures which the Libyans are taking to control the activities of the Algerians, and to reduce tension, the French Ambassador is concerned by the refusal to demarcate the frontier, which he regards as essential if the risk of further incidents is to be eliminated.

Foreign Office pass Saving to Paris and P.O.M.E.F. as my telegrams Nos. 1 and 3.

[Repeated Saving to Paris and P.O.M.E.F.]

DISTRIBUTED TO:

African Department
Western Department

bbbbb

CONFIDENTIAL

JT 1202/177

CONFIDENTIAL

FROM TRIPOLI TO FOREIGN OFFICE

Cypher/OTP.

Mr. Graham

DEPARTMENTAL DISTRIBUTION

No. 176
November 14, 1957.

D. 1.20 p.m. November 14, 1957.
R. 1.48 p.m. November 14, 1957.

CONFIDENTIAL

Addressed to Foreign Office telegram No. 176 of November 14.
Repeated for information to P.O.M.E.F.
and Saving to Paris
Benghazi

15 NOV

Benghazi telegram No. 169 to me: Fezzan.

The Libyan refusal to let the Mixed Commission investigate anything except the October 3 incident is no doubt due to sensitivity about public opinion. I understand that the French Embassy are in favour of accepting the Libyan proposal. They think that once the Commission has met, its scope would widen naturally and discussion of the frontier could not be avoided.

2. The Libyan Prime Minister assured the French Ambassador (who has confirmed this from other sources) that the Algerians have now been removed, not merely from the frontier but from the whole of Fezzan, and are dispersing in Tripolitania. Arms distributed to the Tuaregs are being recovered by the rear party of Algerians under Libyan Army surveillance.

3. You may think it worthwhile to encourage the French to accept the Mixed Commission even on the limited basis proposed by the Libyans, and to express the hope that French troop concentrations opposite the Libyan frontier will now be gradually reduced. The return of the Libyan Army from Fezzan is believed to be imminent.

Foreign Office pass P.O.M.E.F. as my telegram No. 116.

[Repeated to P.O.M.E.F.]

DISTRIBUTED TO:

African Department
Western Department

WGUUU

CONFIDENTIAL

CONFIDENTIAL

JT1201/75 J

BRITISH EMBASSY,

PARIS.

November 21, 1957

10613/113/57

Dear Adam.

In the course of conversation with Sebilleau this morning we touched on Libya.

2. Sebilleau expressed great satisfaction at the way things were going. He said the Libyans had evacuated the two or three hundred rebels, presumably to Tunisia. They had at last agreed to get on with the Mixed Commission; they had neither said 'yes' nor 'no' to its proceeding to a delimitation of the frontier. He thought they would agree in the end.

3. I told him that we had the other day tentatively discussed the possibility of attaching a British officer to the Boundary Commission if this seemed likely to help. Sebilleau said he thought this an excellent idea and hoped we would be able to proceed with it. I made it clear that it had only been an idea and I was not sure whether we should be able to pursue it (I hope we shall).

4. Sebilleau said that as soon as the rebels had been removed; the Tuaregs had changed their line completely and were again on good terms with the French. This had enabled the latter to effect a certain reduction in troops in the area.

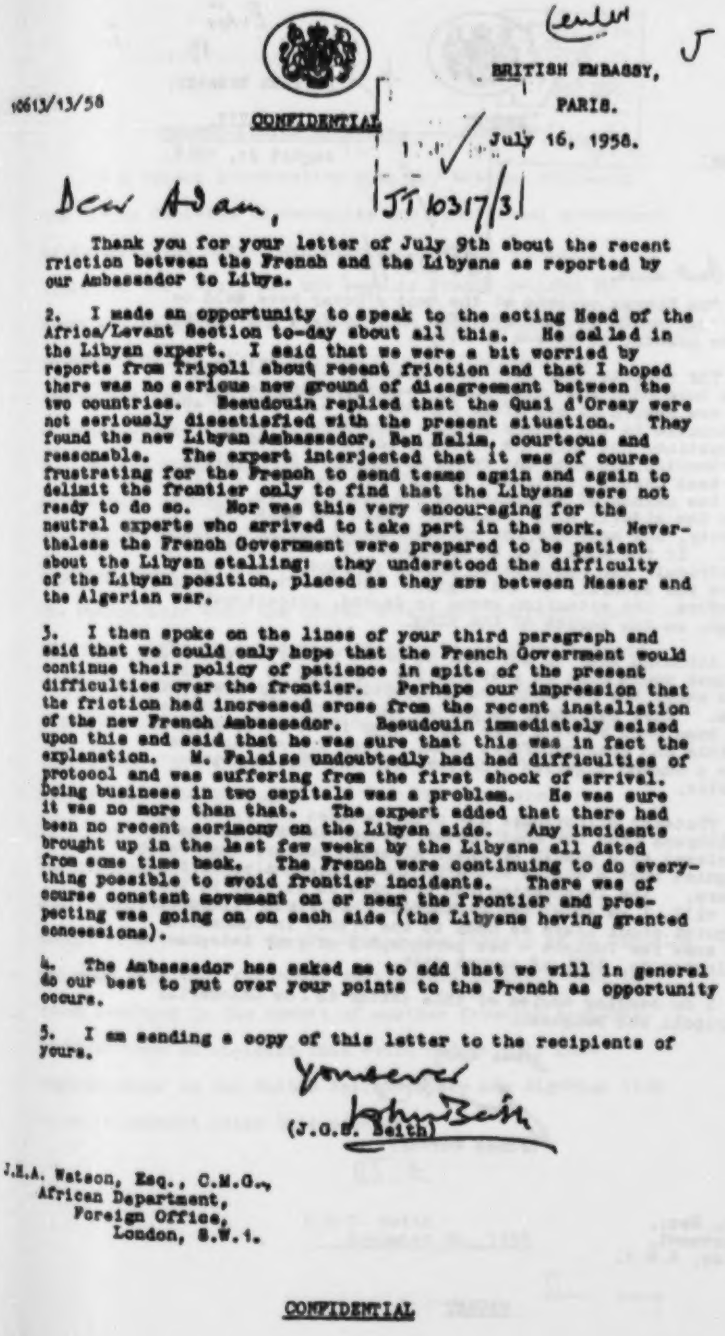
5. I am sending a copy of this letter to Graham and Malcolm.

Yours ever,

G.P. Young

J.H.A. Watson, Esq.,
Foreign Office.

CONFIDENTIAL



Central J

BRITISH EMBASSY,
PARIS.

10613/13/58

CONFIDENTIAL

July 16, 1958.

JT 10317/3

Dear Adam,

Thank you for your letter of July 9th about the recent friction between the French and the Libyans as reported by our Ambassador to Libya.

2. I made an opportunity to speak to the acting Head of the Africa/Levant Section to-day about all this. He called in the Libyan expert. I said that we were a bit worried by reports from Tripoli about recent friction and that I hoped there was no serious new ground of disagreement between the two countries. Beaudouin replied that the Quai d'Orsay were not seriously dissatisfied with the present situation. They found the new Libyan Ambassador, Ben Halim, courteous and reasonable. The expert interjected that it was of course frustrating for the French to send teams again and again to delimit the frontier only to find that the Libyans were not ready to do so. Nor was this very encouraging for the neutral experts who arrived to take part in the work. Nevertheless the French Government were prepared to be patient about the Libyan stalling: they understood the difficulty of the Libyan position, placed as they are between Nasser and the Algerian war.

3. I then spoke on the lines of your third paragraph and said that we could only hope that the French Government would continue their policy of patience in spite of the present difficulties over the frontier. Perhaps our impression that the friction had increased arose from the recent installation of the new French Ambassador. Beaudouin immediately seized upon this and said that he was sure that this was in fact the explanation. M. Falaise undoubtedly had had difficulties of protocol and was suffering from the first shock of arrival. Doing business in two capitals was a problem. He was sure it was no more than that. The expert added that there had been no recent acrimony on the Libyan side. Any incidents brought up in the last few weeks by the Libyans all dated from some time back. The French were continuing to do everything possible to avoid frontier incidents. There was of course constant movement on or near the frontier and prospecting was going on on each side (the Libyans having granted concessions).

4. The Ambassador has asked me to add that we will in general do our best to put over your points to the French as opportunity occurs.

5. I am sending a copy of this letter to the recipients of yours.

Yours ever
John Beith
(J.G.S. Beith)

J.H.A. Watson, Esq., C.M.G.,
African Department,
Foreign Office,
London, S.W.1.

CONFIDENTIAL

+ 5/ M. J

BRITISH EMBASSY,

PARIS.

SECRET

JT 10317/5

(10613/15/58) August 21, 1958.

Dear Smith,

The Libyan experts at the Quai d'Orsay have told us that they would be very grateful to have your assessment of the present situation in Libya.

2. The reports that have been reaching the Quai about Libya have, for some time past, been very disquieting. They now regard it as, after Jordan, the most likely spot for trouble in the Middle East. According to their information, not only the ordinary Libyan Government departments, but also the royal Cabinet and the police have been deeply penetrated by Egyptian influence. The only two points of stability in the country seem to them to be the elderly King (whose seclusion may make for security, but scarcely for effectiveness) and the British Army. If the King were to disappear it would presumably be difficult for the British troops to take action to ensure the security of the régime. In the last resort, therefore, the situation seems to depend, precariously enough, on the person of the King.

3. Although they do not want to press us for information, the Quai would also be grateful for anything we can tell them about the strength and dispositions of our troops in Libya. They say that, as far as the French are concerned, they hope that we will keep our troops in Libya as long as possible and even reinforce them. They are not anxious to share a common Algerian frontier with the United Arab Republic.

4. Whatever differences may arise between the French and the Libyans (and for that matter between the French and ourselves) as a result of their Algerian policy, the French recognise that a stable Libya is in their interest as well as in ours. Any information you can give us to pass to the Quai will, I am sure, pay dividends. It would reinforce the point about Libya we made to the French in connexion with arms for Tunisia - see paragraph 3 of your telegram to Washington No. 5694 of August 11th.

JN1192/843

5. I am sending copies of this letter to the Chanceries at Tripoli and Benghazi.

Yours ever,

James Murray

(James Murray)

H.F.T. Smith, Esq.,
African Department,
Foreign Office, S.W.1.

SECRET

RECEIV. IN ARCHIVES
27 SEP 1958
JT 10341/7.

DENTIAL

FRANCO-LIBYAN RELATIONS

In a recent conversation with Mr. Graham, following the Libyan decision to recognize the provisional government of Algeria, the Libyan Minister for Foreign Affairs indicated that Libya did not care if France decided to break off relations and claimed that the French had not responded to the Libyan gesture in clearing Algerian terrorists from the frontier area. His attitude was one of considerable irritation and some belligerence.

2. On the other hand our Embassy in Paris have been told by the Quai d'Orsay that the French had received information that F.L.N. bands in ~~Tunisia~~ Libya were about to move to the Algerian frontier with the object of creating trouble. The French have told the Libyan Government outright that they know about this and that they would hold the Libyans responsible for anything that might happen; they could not guarantee that there would be no French counter attacks into Libyan territory. The Quai said that we should be informed of this through the French Embassy here.

3. I am asking H.M. Embassy in Benghazi to impress upon the Libyans the importance of avoiding trouble on the frontier and I suggest that if the French Embassy approach us we should tell them that we are urging the Libyans to be sensible and ~~urge~~ ask that they for their part should do their best to avoid anything in the nature of another frontier incident. If there were an incident this would undoubtedly have repercussions in the United Nations where the Algerian item is to be debated later this session.

HSmith.

H.F.T. Smith
September 24, 1958

See my

BRITISH EMBASSY,
PARIS.

(1512/745/58) CONFIDENTIAL ... 1958 September 30, 1958.

JT1031/8

JR1017/86

Dear Department,

May we refer to paragraph 6 of Benghazi despatch No. 42 about Libyan recognition of the Algerian Provisional Government?

2. We do not think there is any danger of a violent French reaction, such as reoccupation of the Fezzan or even a rupture of diplomatic relations with Libya. There has been no public demand for a gesture of this kind (recently of course the French public has been almost exclusively preoccupied with the referendum) and, as Beith reported in his letter to Watson of September 26, the line of the Quai d'Orsay has on the whole been to play the whole affair down. Faber's conversation with Scalabre (his letter to Smith of September 20) took place just after Libyan recognition of the Provisional Government: there was no hint that the French were thinking up a spectacular riposte.

3. What the French would do if the Libyans put themselves in - even a passive - state of war with France is another matter. But this eventuality hardly seems to call for representations in Paris at present.

4. We are sending copies of this letter to the Chanceries at Benghazi, Washington, Tunis, and Rabat and the Consulates-General at Algiers and Tripoli.

Yours ever,

CHANCERY.

African Department,
Foreign Office,
London, S.W.1.

CONFIDENTIAL

JT1024/1

UNITED NATIONS
SECURITY
COUNCIL

JT1021/5.

RECEIVED IN
8-[illegible] 1958

S

Distr.
GENERAL

S/4101
30 September 1958

ORIGINAL: ENGLISH

LETTER DATED 29 SEPTEMBER 1958 FROM THE REPRESENTATIVE OF LIBYA ADDRESSED TO THE SECRETARY-GENERAL

In accordance with instructions from my Government, I have the honour to inform your Excellency that on 25 September 1958, French military aircraft attacked Libyan territory and machine-gunned the village of Esin, situated in the South-West of Libya near the Algerian-Libyan frontier, causing the death of a Libyan citizen and severe damages to property.

It is to be recalled that this is not the first French attack against Libyan territory. On 3 October 1957, French aircraft, tanks and armoured cars carried out a raid on the same village causing the death of a Libyan citizen, wounding Libyan soldiers and setting fire in the village, thus causing great material loss.

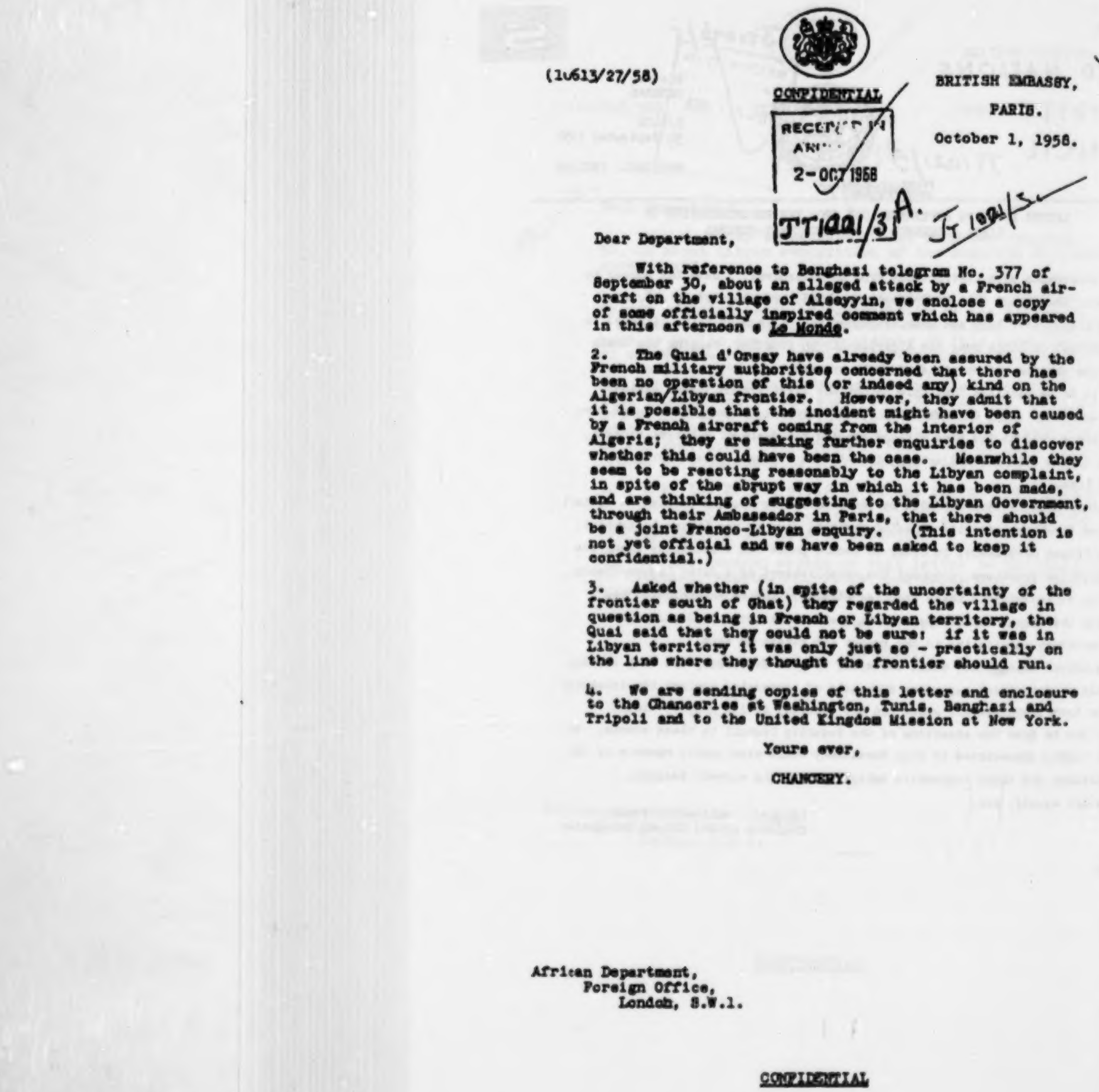
Further attacks were repeated by the French Army located in Algeria against the Libyan frontiers, despite repeated protests made by the Libyan Government.

The Libyan Government, in order to secure peace and tranquility along the Libyan-Algerian frontiers, proposed the establishment of a Joint Libyan-French Commission to investigate these frontier attacks. But no co-operation was shown from the French authorities and further attacks were conducted against Libyan territory culminating in the recent air attack on Esin.

The Libyan Delegation, while conveying to your Excellency the deep concern of the Libyan Government regarding such acts of aggression against the integrity of Libyan territory, its air space and the security of its people, kindly requests you to draw the attention of the Security Council to these events. It would be highly appreciated if your Excellency would also notify Members of the United Nations and their respective delegations to the current Session.

I avail myself, etc.

(Signed) Mohieddine Fekini
Chairman of the Libyan Delegation



J

(10613/27/58)

CONFIDENTIAL

RECEIVED IN
ARCHIVES
2-OCT 1958

JT 1021/3 A.

JT 1021/3

BRITISH EMBASSY,
PARIS.

October 1, 1958.

Dear Department,

With reference to Benghazi telegram No. 377 of September 30, about an alleged attack by a French aircraft on the village of Alsayyin, we enclose a copy of some officially inspired comment which has appeared in this afternoon's Le Monde.

2. The Quai d'Orsay have already been assured by the French military authorities concerned that there has been no operation of this (or indeed any) kind on the Algerian/Libyan frontier. However, they admit that it is possible that the incident might have been caused by a French aircraft coming from the interior of Algeria; they are making further enquiries to discover whether this could have been the case. Meanwhile they seem to be reacting reasonably to the Libyan complaint, in spite of the abrupt way in which it has been made, and are thinking of suggesting to the Libyan Government, through their Ambassador in Paris, that there should be a joint Franco-Libyan enquiry. (This intention is not yet official and we have been asked to keep it confidential.)

3. Asked whether (in spite of the uncertainty of the frontier south of Ghat) they regarded the village in question as being in French or Libyan territory, the Quai said that they could not be sure: if it was in Libyan territory it was only just so - practically on the line where they thought the frontier should run.

4. We are sending copies of this letter and enclosure to the Chanceries at Washington, Tunis, Benghazi and Tripoli and to the United Kingdom Mission at New York.

Yours ever,

CHANCERY.

African Department,
Foreign Office,
London, S.W.1.

CONFIDENTIAL

BRITISH EMBASSY IN LIBYA,
BENGHAZI

RECEIVED IN
ARCHIVES
13 OCT 1958
JT 1041/41

(1034/20/58)

CONFIDENTIAL

October 7, 1958

Dear Howard

There is not much to report from Benghazi on the present Franco-Libyan tension since the Ambassador's letter 1034/19/58 of October 2 except for a press campaign (in two of the so-called "independent" papers) calling for the rupture of diplomatic relations and the abrogation or reconsideration of the Franco-Libyan Treaty. The English-language weekly, "Cyrenaica Weekly News" is the more violent on this theme, going so far as to call for a rupture with France by Libya, Tunis and Morocco. Only thus can the United Kingdom and U.S.A. be made to realise the dangers (i.e. of allowing France to continue her present policy).

2. I asked the Acting Permanent Under Secretary at the Ministry for Foreign Affairs about this campaign. He denied that it in any way reflected Government policy.

3. The Deputy-President at the Senate (a Fezzanese) is also reported as calling for the abrogation of the Treaty, since Libyan recognition of the Algerian Provisional Government meant that that Government was now the only one which could make agreements about the Libyan Algerian frontier. This opens up pleasant perspectives - a note, say, from the Libyans to the F.L.N. calling on them to prevent the use of their Territory by French forces as a base for attacks on Libya.

4. The Libyan Ambassador in Paris, bin Halim, returned to Libya on October 5 for consultations.

5. I am sending copies of this letter to Tripoli, Tunis, Paris, U.K.Delegation New York, Pomef, Washington.

Yours ever

Christopher

(C. T. Gandy)

H.F.T.Smith, Esq.,
African Department,
Foreign Office, S.W.1

CONFIDENTIAL

FOREIGN OFFICE, S.W.1.

October 10, 1958.

~~CONFIDENTIAL~~

(JT ~~1021~~)

OUTFILE

JT10317/11

I can just catch this bag with a reply to your letter 1034/19/58 of October 2 and its request that we should send you instructions on how to reply to the Libyan note about the frontier incident, enclosed in your Chancery Letter 1034/16/58 of September 30.

2. As we read the Libyan note it did not require a formal reply from the Embassy and we think it wouldnot be desirable for you to make one. There is of course the standing instruction to tell the Libyans to do their best to avoid incidents with the French and I am sure the Embassy have been urging prudence upon them. You will also have seen my letter of October 3 reporting the Libyan Ambassador s conversation with the Secretary of State, and a recent despatch to Paris, which was copied to you (I do not have the reference to hand) reporting that the Secretary of State mentioned the frontier incident to the French Ambassador. Finally you will be getting by this bag a copy of a memorandum given to us by the French Embassy which seems to show that the French are anxious to avoid trouble.

3. I am copying this letter to Paris, Tripoli the United Kingdom Mission to the United Nations and P.O.M.E.F.

(H.F.T. Smith)

C.T. Gandy Esq.,
Benghasi.

P.S. Since dictating this letter I have heard from the French Embassy here that the Libyans have agreed to a Mixed Commission to investigate this incident and those that took place in 1957.

CONFIDENTIAL

Exhibit LC-M 11

TRANSLATION

Parliamentary Proceedings Senate

24 April 1899

...

Canevaro, Minister of Foreign Affairs. In replying now to the questions by Senators Camporeale and Vitelleschi, I must go back a few years and give a brief historical account of the Tripolitanian hinterland before dealing with the Anglo-French Convention of 21 March, the contents of which are now well known.

After the occupation of Tunisia in 1881, it became clear that France intended to extend its influence beyond the southern frontier of the Beyship, extending itself along the western frontier of Tripolitania, into regions where the Algerian hinterland merges into the Tripolitanian hinterland.

The Ottoman government, for its part, while it was reluctant to negotiate with France to define the boundaries of Tripolitania clearly, for fear that the negotiations might be taken to infer recognition of French sovereignty in Tunisia, did nothing to take possession of the Tripolitanian hinterland, so that France was able to continue undisturbed to extend its influence widely towards the south.

In 1890, on 5 August to be precise, a Convention was signed between Britain and France establishing the boundaries between French Sudan and the Niger regions, by means of a line drawn from Say on the Niger eastward as far as Barrua on Lake Chad, in such a way that, nothing having been defined towards the east, it would seem that French influence could extend from that area up to another line which was drawn from the south western end of Tripolitania down to Barrua, so that Tripolitania was already beginning to lose one of its commercial routes with the Centre of Africa.

France declared nonetheless, in these circumstances, that it wished to respect the "rights of Turkey in the regions established on the southern frontier of Tripolitania" but this statement, essentially, implied only respect for the Sultan's rights to the southern part of Tripolitania, i.e. to the Fezzan and not in fact to the Tripolitanian hinterland.

It was then that the Italian government and other governments who felt it right to sustain the integrity of the Ottoman Empire, began to worry about the fate of

Tripolitania! It was feared, in fact, that although it was not directly threatened, it could gradually be surrounded through French advance into the hinterland, and be suffocated, as it were (while remaining under Turkish rule), as it would be deprived of the other roads along which it still draws it sustenance, in the trade which is the life of the vilayet.

Italy showed more interest than the others, as is natural; but the agreement between the Powers, while it appeared effective in protecting Tripolitania proper, was less promising for the hinterland, which the other Powers could not see as effectively connected with the statu quo in the Mediterranean.

Added to this is the fact that the Sublime Porte in a note of November 1890 spelt out the hinterland to which the Sultan believed he was entitled as Sovereign of Tripolitania with such exaggeration as to offend the rights to the hinterland already vested, according to the same theory, in France, Germany and Britain; that is why these Powers did not wish to uphold the Turkish claims. The three Powers were quick moreover, to make formal provision for their situation around Lake Chad.

On 15 March 1891, a further agreement was made between Germany and France which delimited the frontiers between Cameroon and French Congo.

Thanks to this agreement, France, stretching upwards from the south through Cameroon and the Free State of Congo, as far as the mouth of the Shari to the south east of Lake Chad, obtained practically the whole eastern and northern coast of the Lake.

The hinterland claimed by Turkey therefore was again considerably cut into and the road to the Nile regions was left open to France.

An attempt was again made in 1894 to draw Turkey's attention to the situation created by the Franco-German Treaty, but nothing came of it.

From that day, it was natural for an attempt to be made to link French Sudan to French Congo, from the north and from the east at Chad, French influence being thereby extended to the entire Tripolitanian hinterland, and crossing the caravan routes which stretched from the coast of Tripoli to the centre of Africa.

In fact, France was quick to obtain from Britain what it had already obtained from Germany.

A third agreement between France and Britain, of 14 June 1898, gave France, as included in its sphere of influence, the northern, eastern and south eastern banks of the Chad as far as the Shari.

As this brief sketch shows, Britain had already as from 1890 evidenced a complete lack of interest in the Tripolitanian hinterland, while France considered it fair game, without any opposition.

In the meantime, Turkey remained silent and, instead of emphasising its presence in one way or another in the main oases of the Tripolitanian hinterland, took steps only to defend, from the coastal region, the vilayet, which it felt was threatened by us and consequently armed and fortified it, believing that Italy had ambitions on it.

(Uproar, discussion).

What acted to our detriment was the fact that we had shown a proper and open interest in the matter more than other governments; perhaps also because over-zealous agents had quickly drawn the attention of the Porte to Tripolitania as it was easier to show what was happening there than in the desert!

The conviction was therefore steadily growing in Italy that it was up to us more than any one else to uphold the integrity of Tripolitania and to keep its commerce with the interior intact, while the fact that new governments coming into power, although showing themselves strenuous and effective defenders of the vilayet, for reasons of the integrity of the Ottoman Empire and for reasons of the statu quo in the Mediterranean, had been unable effectively to oppose French influence, which little by little was invading the hinterland. Therefore, while our diplomatic notes expressed a more or less direct interest in the Tripolitanian hinterland, which elicited little response from friendly governments, France continued to travel along the roads of the hinterland with scientific, commercial and military expeditions with great energy and perseverance, also making agreements in its favour with the indigenous chiefs of the hinterland.

This was the situation when the British were victorious at Ondurman and the arrival of the Marchand expedition at Fashoda highlighted the risk of a terrible war between France and Britain; a war which could only be avoided between these two powerful peoples by a delimitation of their mutual spheres of influence in Africa, in a way that would conveniently safeguard the interests and the amour propre of both parties.

I soon perceived, as it was easy to see, the possibility of the hinterland of Tripolitania being jeopardised for good, and I quickly seized the opportunity. But, even so, and for some time already, it was too late, as it was a natural corollary of African policy in recent years that war between France and Britain could be averted only with a delimitation between the Valley of the Nile and the Chad Basin. It thus came suddenly, but not surprisingly, the Convention of 21 March!

Although the Convention has a negative character and is binding only on the two nations who signed it, it has made a particular impression in our country. The government similarly has given it particular attention although conscious of the fact that it could not itself be held to blame in any way for being unprepared. The outcome would have been the same whatever government was in power, since as I believe, I have showed, it was the unavoidable consequence of the policy held in Africa by all the Powers concerned during the last nine years. There was certainly every reason for coming to a conclusion of that kind. There was a fear of a major war, which had to be avoided at all costs, and to avoid which we also did everything in our power with the two friendly governments, which were ready to enter into the conflict. A great benefit was undoubtedly obtained from reducing the serious danger presented to civilisation, and we need not be too sorry about the outcome, but for the Tripolitanian hinterland the future remains uncertain, and this we have been unable to prevent.

I must now quickly add that the government has not failed to request amicable explanations from France and Britain, which were given to us fully and which removed any doubt as to their good intentions, explanations accompanied moreover on the part of both governments by protestations of respectful friendship. And the assurances given to us served to establish:

1. That there is no fear either at present or in the future of any excursion from the two Powers against Tripolitania, an integral part of the Ottoman Empire;

2. Nothing will be done that may hamper commercial communications between Tripolitania and the central regions of Africa.

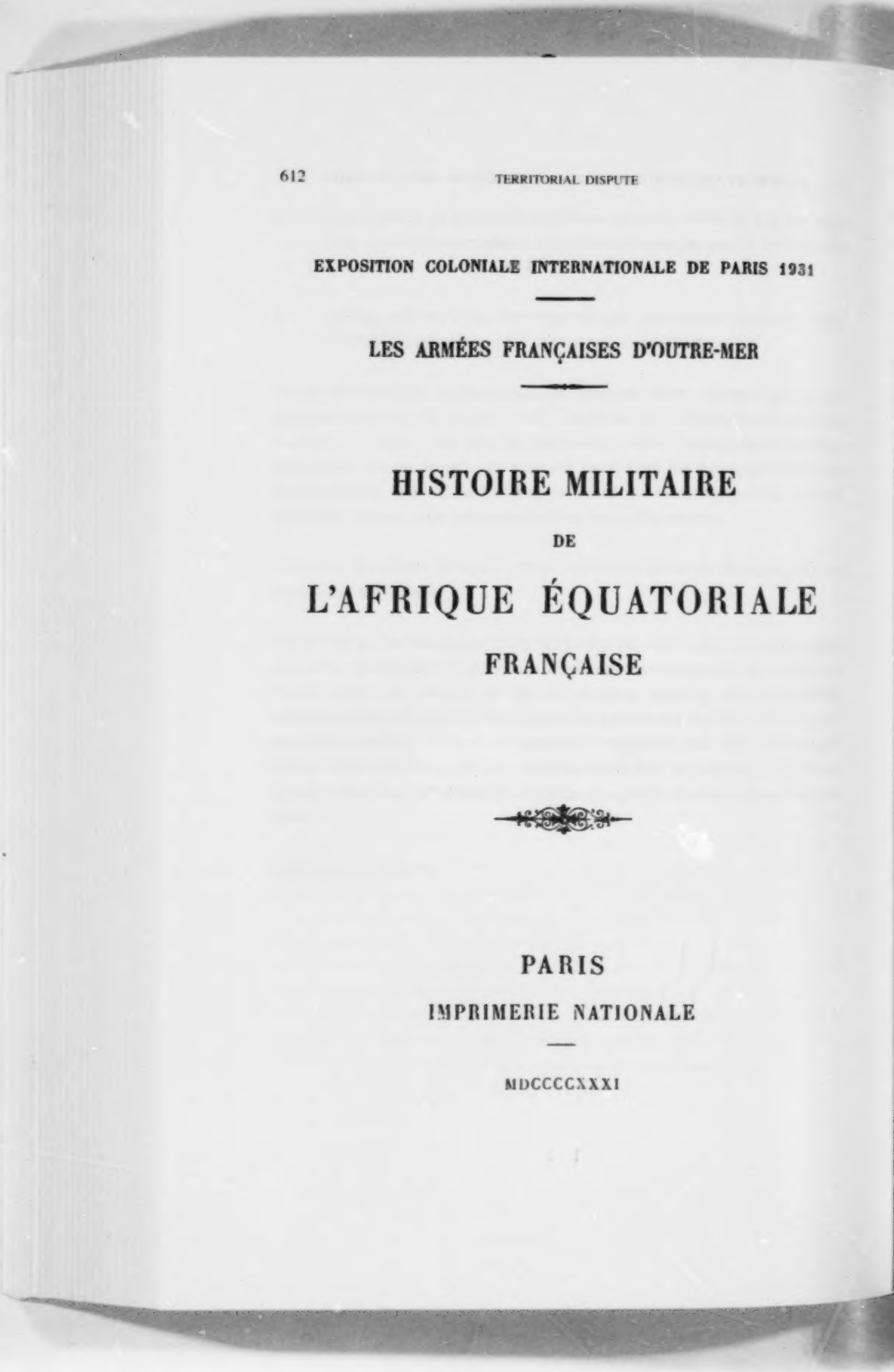
I hope that my frank explanation of the facts will throw a proper light on the question concerning the Anglo-French Convention of 21 March, for the part that concerns us; and I trust that my statements, while showing that the Italian government has not failed in its duty, will satisfy both the honourable Members and the Senate and will further help to bolster public opinion in this country, reassuring them as to the true purport of the recent Convention.

And now if the Senate permits, I will end with a good omen for the dignity, for the grandeur of our country!

I hope that in the vicissitudes of foreign policy and above all when they appear difficult or threatening, we can follow the examples recently given by France and Britain where the people, instead of accusing, assailing and demolishing, politicians of all parties have rallied round the government backed up by the press and public opinion, whoever the ministers concerned and, with the strength without which the battalions and warships would have no meaning, that moral strength which is an indispensable condition for success, not only in peace but also in war.

(Applause and debate)

Exhibit LC-M 13



EXPOSITION COLONIALE INTERNATIONALE DE PARIS 1931

LES ARMÉES FRANÇAISES D'OUTRE-MER

HISTOIRE MILITAIRE
DE
L'AFRIQUE ÉQUATORIALE
FRANÇAISE

PARIS
IMPRIMERIE NATIONALE

MDCCCCXXXI

où Khouans[1] et Touareg, fidèles ou alliés momentanés de la Senoussiya[2], agissaient en maîtres, tel était le but immédiat.

Partant du Dagana, où un poste est installé dès octobre 1901, l'action se porte vers Bir Alali où les Senoussistes du Kanem ont leur principale zaouia. Après un premier échec du capitaine Millot, en novembre, le commandant Tétart occupe la zaouïa le 20 janvier 1907. C'est la fin du grand dessein de domination temporelle sur les pays du Tchad poursuivi depuis vingt ans par le maître de la Senoussiya.

Les Khouans ne se résignent cependant pas encore. En décembre 1902, ils dirigent successivement leurs coups sur un détachement de tirailleurs à N'Tiona, puis sur le poste français de Bir Alali. Après cette dernière affaire, marquée par la mort de Mohammed bou Aguiba, représentant de la Senoussiya, le Kanem ne sera plus inquiété sérieusement.

La soumission des peuplades du lac et quelques opérations de l'escadron dans le Bahr-el-Ghazal augmentent peu à peu la zone de sécurité (1901-1905).

Si la prise de possession du Kanem était effective, sa tranquillité dépendait des Senoussistes du Borkou dont la main s'étendait loin vers le sud.

De 1904 à 1907, méharistes et spahis poursuivent les rezzous[3] lancés contre les populations soumises. La reconnaissance du capitaine Bordeaux pousse même une pointe hardie jusqu'à Aïn-Galakka, obligeant les Khouans à abandonner momentanément leur zaouïa (avril 1907).

En 1907 et 1908, rezzous et contre-rezzous se succèdent jusque dans les régions voisines de l'Ennedi et du Borkou. Il faut pourtant en finir.

---

[1] On appelle *Khouans* les membres d'une confrérie religieuse : au Tchad, ce terme a pris un sens plus restreint et désigne un *senoussiste*, non seulement affilié à la confrérie de la Senoussiya, mais d'une *race ayant du prestige*.

Cette dernière condition implique :

De ne pas être trop coloré ;

D'appartenir de préférence à des tribus arabes de Tripolitaine : Zouey, Bedour, Medjabré, Ouled Sliman (originaires de Koufra et du Fezzan).

(Renseignements fournis par le lieutenant-colonel Ferrandi.)

[2] *La Sennoussiya* désigne la confrérie des *senoussistes*, le suffixe *ya* indiquant en langue arabe la collectivité. On pourrait employer également la terminologie *les Senoussiya* usitée dans l'Afrique du Nord.

[3] En Mauritanie et au Soudan, pour désigner un groupe d'hommes armés, les Maures emploient au singulier le mot *ghezi*, au pluriel le mot *ghezian*. Les Arabes du Tchad se servent du mot *ghezoua*. Il a été jugé plus simple de franciser ces termes et d'utiliser, quelle que soit la région, le mot rezzou avec la signification qu'il a déjà acquise en Afrique du Nord : groupes d'hommes armés en quête de brigandage.

les sentiments à l'égard de la France changeaient, à mesure que l'influence ottomane devenait plus incertaine, refusa d'entrer en pourparlers malgré les assurances données sur les intentions du lieutenant Detchebarne. L'officier revint au Ouadaï.

Par le traité de Lausanne, signé le 18 octobre 1912, les Turcs abandonnèrent aux Italiens leur souveraineté sur la Tripolitaine et la Cyrénaïque. La Senoussiya restait seule maîtresse au Borkou et l'attitude déjà assez froide d'Abdallah Tooueur ne tarda pas à devenir hostile.

Fin octobre, Abdallah Tooueur fit proclamer par le kaïmakan la nouvelle d'un protectorat turc sur l'Ennedi et de l'installation d'un poste ottoman à Baki. Le plan des Khouans se dévoilait nettement. Il s'agissait de relier Koufra par Oueyta au Dar Four, au Massalit, au Sila et au Rounga en contournant la zone française d'occupation effective.

C'est à cette époque, qu'Abd er Rahman Firtit, protégé d'Ali Dinar, venait s'installer au Zaghaoua. Andoka, sultan du Massalit, menacé par Ali Dinar, envoyait des présents à El Facher. Le bruit courait avec insistance au Sila d'une attaque prochaine du poste français de Goz Beïda au cours des fêtes de l'Adhié (22 novembre)[1].

Une nouvelle tentative d'encerclement des frontières du nord et de l'est, inspirée par la Senoussiya, se dessinait. La menace allait exiger un nouvel effort des troupes françaises et des mesures de précaution immédiates. Une protestation énergique fut adressée au kaïmakan à Aïn-Galakka le 4 novembre 1912. Cette protestation étant restée sans réponse, de nouvelles observations furent envoyées au représentant turc ainsi qu'au lieutenant qui avait occupé effectivement Baki. Le 13 janvier 1913 seulement, le kaïmakan répondit qu'il allait évacuer l'Ennedi en témoignage de ses intentions amicales. Le lieutenant Dufour, avec un détachement de 90 méharistes, reçut mission de parcourir l'Ennedi. Il rencontra le lieutenant turc qui lui annonça le retrait de toute force ottomane de l'Ennedi et du Borkou.

Dans le même temps, un détachement de la 8^{e} compagnie occupa en permanence Oum Chalouba.

Ces mesures donnèrent la preuve de l'intention très ferme des autorités françaises de ne pas laisser prescrire leurs droits sur ces pays. La mort auxquels nous ripostons; l'ennemi disparaît, c'est l'obscurité complète; je rassemble les tirailleurs et nous nous dirigeons vers l'emplacement où le rezzou a campé, guidés par les cris joyeux des femmes et des enfants délivrés.

---

[1] Voir page 408 et suivantes.

«Au moment où nous nous lancions à la charge, j'ai vu s'affaisser le caporal Mamady N'Diaye; nous le trouvons mort, frappé d'une balle qui lui a traversé le cœur au moment où il se retournait vers son escouade pour l'entraîner du geste et de la voix.»

⁂

De nouveaux rezzous étaient signalés en formation au Borkou.

Pour les surveiller, le lieutenant Dufour, qui avait poussé jusqu'à Baki pour s'assurer de l'évacuation de ce poste, reçut l'ordre de se porter en observation sur Bokalia tout en cherchant à recueillir des soumissions dans l'Ennedi.

Sur ces entrefaites, le commandant de la circonscription du Ouadaï fut informé que le chef khouan, Si Saleh Bou Kreïmi, le vieil adversaire de Doroté et de Beskéré, s'était mis en route d'El Facher sur Koufra avec une importante caravane d'armes, de mil et d'ivoire. Le lieutenant Dufour, alors à Soala, en fut informé. Cet officier, complétant ses renseignements, apprit le passage prochain au puits d'Oum-el-Adam de la caravane, qui cherchait à éviter les Français dont elle connaissait la présence dans la région.

Par une marche ininterrompue de vingt heures, le lieutenant se porta sur Oum-el-Adam où il arriva le 13 mai 1913. Le 15 au matin, la caravane se présenta au puits. Le lieutenant Dufour, qui avait maintenu sa troupe en dehors des vues, commença un mouvement enveloppant et se porta de sa personne vers les caravaniers.

Ceux-ci, surpris à moins de 400 mètres, s'empressèrent de parquer leurs animaux, d'organiser une zériba et se préparèrent au combat. Mais se voyant cernés par cent tirailleurs prêts à se jeter sur eux à la baïonnette, ils hésitèrent, puis, après une longue négociation, se rendirent.

Cette capture eut un retentissement considérable. Des armes nombreuses passant en contrebande furent confisquées, des lettres d'Ali Dinar au chef de la Senoussiya tombèrent entre les mains des autorités françaises et jetèrent un jour singulier sur les relations entre le sultan du Dar Four et les Senoussiya. Enfin, Si Saleh Bou Kreïmi, envoyé en résidence forcée à

Fort-Archambault, était éloigné du Borkou où il eût pu jouer de nouveau un rôle dangereux.

Quelques jours après, le lieutenant Dufour, resté à Oum-el-Adam avec 86 tirailleurs, apprit la formation d'un important rezzou à Aïn-Galakka. Le renseignement ajoutait qu'Abdallah Tooueur lui-même le dirigeait et avait décidé de se jeter soit sur les méharistes du Tchad, soit sur les campements nomades d'Oum Chalouba.

Si invraisemblable que fût la nouvelle, le lieutenant Dufour fortifia son campement.

Il avertit aussitôt Arada et Abéché, où l'on décida l'envoi d'un groupe de 50 tirailleurs sous les ordres du maréchal des logis de Grammont, d'Oum Chalouba.

Le 21 mai, un courrier du maréchal des logis de Grammont annonçait le départ certain d'Abdallah Tooueur d'Aïn-Galakka; Kaossen, le chef targui, adversaire du commandant Hilaire dans l'Ennedi, l'accompagnait.

«La zériba du lieutenant Dufour était installée en terrain plat[1] avec un champ de tir étendu au nord, à l'est et au sud. A l'ouest, une petite crête, située à environ 300 mètres, pouvait permettre d'approcher sans être vu.

«Les précautions habituelles prises pendant la nuit étaient les suivantes :

«4 sentinelles en avant des quatre angles; rondes d'Européens; une patrouille parcourant les environs du camp un peu avant le lever du jour; une patrouille montée partant en avant des chameaux (et assurant pendant le jour la sécurité éloignée du pâturage); enfin, chaque soir, à l'appel, les armes étaient approvisionnées et la baïonnette mise au canon. Une tranchée en arrière de la zériba.

«Le lieutenant compléta ces précautions en faisant prendre le quart aux Européens et aux deux meilleurs gradés indigènes et en plaçant un petit poste derrière le repli de terrain situé en avant de la face ouest.

«Le commandement des faces était ainsi distribué : face ouest, lieutenant; face nord, sergent Boucq; face est, adjudant Calinon; face sud, sergent Bala Sidibé.

«La lune avait été pleine dans la nuit du 21 au 22.

«Le 23, à 3 heures du matin, le sergent Boucq, en réveillant le lieutenant pour le quart, lui rendit compte qu'ayant entendu des bruits suspects vers le nord, il avait envoyé une patrouille mais que cette patrouille n'avait rien trouvé.

---

[1] Rapport du lieutenant Dufour.

«A 4 h. 15, le lieutenant se dirigeait vers le caporal de garde, pour envoyer la patrouille habituelle quand, jetant les yeux vers le nord, il aperçut une longue ligne blanche à environ 300 mètres du camp, en même temps que retentissaient quelques coups de fusil. Le lieutenant donna aussitôt l'alarme.

«Voilà ce qui s'était passé : quelques instants auparavant, le tirailleur de garde à l'angle nord-ouest, ayant vu passer devant lui, se dirigeant vers le nord, un des chevaux du petit campement gorane annexé à la zériba, s'était élancé pour l'arrêter. Le tirailleur arriva ainsi à proximité de l'endroit où les Khouans prenaient leur dispositif d'attaque. Quelques uns d'entre eux, voyant arriver le cheval et le tirailleur, et ne se rendant pas bien compte à cause de la nuit, de ce que cela pouvait être, tirèrent une vingtaine de coups de fusil. Cette faute qu'ils commirent, en ouvrant prématurément le feu, contribua grandement à leur perte. Les Khouans ouvrirent un feu intense et progressèrent par bonds rapides.

«Aussitôt après avoir donné l'alarme, le lieutenant prescrivit des feux de salve, l'ennemi paraissant assez éloigné. Mais au même moment, les chameaux affolés par les détonations et par la lueur des coups de fusil, bien qu'un grand nombre fussent attachés, franchissaient les zéribas, piétinaient les tirailleurs et s'enfuyaient vers le sud, causant un énorme brouhaha qui, joint au bruit de la fusillade, empêcha les commandants des faces nord et est d'entendre la voix du lieutenant et rendit aussitôt le commandement d'ensemble impossible.

«Le sergent Boucq, voyant l'ennemi s'approcher rapidement, commanda le feu à volonté.

«L'adjudant Calinon envoya le sergent Bala Sidibé, dont la face n'était pas menacée, avec 5 tirailleurs pour arrêter les chameaux dans leur fuite. Bala Sidibé s'acquitta de sa mission, confia les chameaux aux 5 tirailleurs et à 4 bellahs qui ne s'étaient pas sauvés, et revint prendre le commandement de sa face. Le lieutenant prit le commandement de la face ouest et se tint prêt, cette face n'étant pas immédiatement engagée, à intervenir à la baïonnette, si la face nord paraissait entamée.

«L'ennemi arrive très rapidement à une courte distance de la zériba, 60 mètres environ, et de là, ouvre un feu d'enfer. Pendant quelques instants c'est une épouvantable rafale qui hache la zériba et crible de balles tout ce qui dépasse la surface du sol, djérabs de mil, tonnelets, bagages des Européens.

«Les tirailleurs couchés dans la tranchée ne souffrent pour ainsi dire pas de ce feu : un tué, trois blessés. Sur la face nord, maintenus par le sang-froid et le courage vraiment admirables du sergent Boucq, les tirailleurs répondent au feu de l'ennemi par un feu non moins violent.

«Presque aussitôt du reste, excités par la voix de leurs chefs et principalement d'Abdallah Tooueur et de Kaossen, qu'on entend très distinctement, les Khouans se ruent à l'assaut. «Les Askars ont fui» crie Abdallah Tooueur, qui avait vu les chameaux s'enfuir et qui, de l'extérieur, ne pouvant voir les tirailleurs cachés dans la tranchée, croyait le camp en partie évacué. «Prenez les chrétiens vivants» ajoute-t-il encore. Les Khouans font preuve à ce moment d'un grand courage : ils essaient d'arracher la zériba, l'un d'eux plante le drapeau dans les épines; il est tué à bout portant par le sergent Boucq. Le gros de l'effort ennemi se porte sur la partie est de la face nord; deux groupes importants débordent cependant sur les faces ouest et est et essaient de pénétrer par les portes correspondantes.

«Mais l'effort de l'ennemi est brisé aussitôt : la masse qui a donné l'assaut s'écroule, semble s'évanouir. Cinquante cadavres jonchent le bord de la zériba de la face nord, une douzaine gisent sur les faces est et ouest. Les Khouans s'enfuient; quelques-uns tombent encore dans cette fuite.

«Le lieutenant ordonne aussitôt des feux de salve. Le jour n'a pas encore paru. L'attaque n'a pas duré un quart d'heure.

«Il s'agit de remettre un peu d'ordre dans la zériba, de rassembler les chameaux, dont un assez grand nombre ont échappé aux tirailleurs et aux bellahs, et surtout de remplacer les cartouches tirées. Le sergent Bala Sidibé est envoyé avec une forte patrouille (11 hommes) parcourir les environs du camp et s'assurer de la fuite réelle des Khouans.

«Vers cinq heures moins le quart, quand le jour s'est levé, un groupe ennemi d'une trentaine d'hommes tente, sans succès, un retour offensif. Les Khouans essaient, selon toute vraisemblance, de venir enlever des blessés ou des tués importants.

«Bala Sidibé envoie demander des cartouches; le lieutenant lui en fait parvenir une caisse, puis ordonne au sergent Boucq de se porter avec une escouade et la patrouille du sergent Bala Sidibé sur une crête située à environ 1.500 mètres du camp, de s'y établir et, le cas échéant, de poursuivre l'ennemi par des salves.

«Le sergent Boucq déloge d'une crête un groupe d'une trentaine de Khouans qui protège la fuite du gros du rezzou.

«Le groupe khouan s'enfuit; le gros du rezzou a déjà regagné les chameaux depuis un certain temps et file à toute allure vers le nord-ouest. Trois hommes sont tués dans cette poursuite. Les derniers coups de fusils sont tirés vers 6 heures du matin.

«Une grande fosse est creusée au nord de la zériba et, à 10 heures du matin, les 66 cadavres d'ennemis tombés à côté de la zériba y sont enterrés.»

Ce combat fut un désastre pour les Senoussistes. Parmi les tués ennemis se trouvaient Abdallah Tooucur, un fils d'Abou Aguila[1], un fils et un neveu de Mohammed el Sunni, mokkadem de la Senoussiya au Borkou, un fils de Si Saleh Bou Kreïmi.

Les gens du Borkou, pris de panique et croyant à une poursuite s'enfuirent en grand nombre vers Koufra. Kaossen et les Touareg abandonnèrent le Borkou pour se rendre dans l'oasis de Timmerim.

Les autorités françaises n'avaient plus aucun ménagement à garder vis-à-vis des Khouans. Liés cependant par des considérations de politique générale, elles ne purent profiter de ces circonstances favorables pour occuper le Borkou où Mohammed Bou Arida remplaça Abdallah Tooueur. Leur attitude passive ne tarda pas à réveiller les ardeurs des pillards qui, dès le mois de juin, attaquèrent de nouveau les protégés français.

Le 6 juin, un rezzou bideyat de 60 hommes attaqua une patrouille de tirailleurs et d'auxiliaires près d'Oum Chalouba. Reçus par des feux bien ajustés, les assaillants se dispersèrent, laissant des cadavres sur le terrain. En août, un rezzou parti de Galakka traversa le Bahr-el-Ghazal et vint au nord de la subdivision d'Ati enlever des animaux et des enfants.

Le 7 octobre, le maréchal des logis de Grammont, en tournée de recensement et accompagné de 16 tirailleurs montés, fut prévenu qu'un rezzou de Khouans, Kindine et Toubbou avait enlevé des animaux aux Mahamid.

Laissant 4 tirailleurs à la garde de son campement, le maréchal des logis de Grammont se mit à la poursuite du rezzou avec 12 tirailleurs. Il le rejoignit à 21 heures près de Goz-Ariane. Le rezzou, formé sur deux colonnes, encadrait les troupeaux de prises. L'obscurité empêchait de se

---

[1] Chef khouan tué par les troupes françaises au début de l'occupation du Kanem.

CHAPITRE III.

OPÉRATIONS À L'INTÉRIEUR DU BORKOU.

I. Prise de Gouro.

II. Organisation militaire du Borkou-Ennedi.

III. Pacification du Borkou.

I. — PRISE DE GOURO.

Au lendemain de la prise d'Aïn-Galakka, il ne paraissait plus exister au Borkou de force organisée capable de résistance sérieuse.

La seule bande armée, avec laquelle il fallait encore compter, était constituée par la réunion vers Faya de la garnison de la zaouïa commandée par Madhi ould Sunni et du détachement d'Aïn-Galakka commandé par Abou-Ret. Cette bande pouvait être estimée à 100 ou 150 fusils au maximum. Elle évacua Faya, à la nouvelle de la chute d'Aïn-Galakka, et retraita sur Yarda.

La colonne marcha le 1er décembre au matin sur Faya en suivant la vallée du Borkou. Les monticules rocheux, les arêtes de grès en voie de désagrégation ainsi que le vent très froid et violent rendirent la marche excessivement pénible. Faya fut atteint le 3 décembre. La démoralisation dans le camp senoussiste était extrême. Le colonel Largeau voulut en profiter pour essayer de causer avec les Khouans, d'établir si possible un modus vivendi et, en cas d'échec, de porter le dernier coup à la bande senoussiste dont l'action pouvait avec le temps devenir à nouveau dangereuse.

Déjà d'Aïn Galakka le 29 novembre, le colonel Largeau avait envoyé sur Gouro la veuve de Mohammed Bou Arida avec un manifeste où il faisait connaître à Mohammed ould Sunni à Gouro son désir d'entente. Si les Senoussistes le voulaient, on pouvait donc traiter à Gouro.

Une colonne légère fut constituée avec un peloton de la 7e compagnie, la 8e compagnie et l'artillerie. Devaient rester à Faya 50 hommes de la 7e compagnie avec le chef de bataillon Tilho chargé de l'administration provisoire du pays[1].

La colonne légère quitta Faya le 8 décembre et par Odofou-Dourkou-Kada, se présenta le 14 décembre devant Gouro.

«Le 13 au soir[2], comme déjà le 26 novembre du plateau d'Anerka pour Aïn-Galakka, j'avais pu avoir à la jumelle une vision du site où se trouve Gouro; du haut d'une dune dominant la plaine qui s'étale jusqu'aux premiers contreforts du Tibesti, la zaouïa m'était apparue au nord de sa palmeraie à une distance réelle de 19 kilomètres. J'avais pu remarquer que la zaouïa s'étendait dans un vaste cirque de collines; la muraille rocheuse, lointaine dans l'ouest se rapprochait insensiblement en décrivant une large courbe jusqu'à n'être plus éloignée au nord-est des habitations que de 700 ou 800 mètres; les explications du guide complétèrent cette reconnaissance à vue.

«A la halte du soir, je pus faire aux commandants d'unité, une description sommaire du site et de l'itinéraire à suivre; je leur dis mon intention de faire cerner la zaouïa afin que rien ne put s'échapper; je leur recommandais, mon intention étant de négocier, de ne pas ouvrir le feu tant que leurs hommes n'auraient pas été exposés de façon qu'il ne pût y avoir doute ou équivoque sur les intentions de Mohammed Sunni. Cette recommandation fut ponctuellement suivie le lendemain.

«Le 14 au matin, grâce aux ondulations du terrain qui masquent la vue, je pouvais espérer, jusqu'à 7 heures, n'avoir pas été aperçu; à ce moment, un homme debout dans l'est nous vit et, après avoir observé un instant, prit sa course vers la zaouïa; au même moment, à la pointe sud de la palmeraie, une femme fut arrêtée et interrogée; elle nous apprit que Mohammed Sunni était seul avec les siens et que son fils Madhi se tenait vers conséquence de l'installation récente au Borkou. Au contact direct avec les Tibestiens, de tout temps de grands pillards, les populations soumises souffraient de leurs incursions. La répression du brigandage sur les pourtours du Tibesti suffit à absorber l'activité des troupes pendant cette période.

---

[1] La force dont disposait le commandant Tilho devait s'augmenter rapidement à partir du 15 décembre. Arrivèrent successivement: le lieutenant Tranchant venant du Kanem avec un convoi de mil; le capitaine Ripert, amenant du matériel de T.S.F. du Ouadaï; le capitaine Jérusalémy convoyant un envoi de mil d'Ati. Les animaux amenés formaient avec ceux de la colonne un total de 1.923 chameaux.

[2] Rapport du colonel Largeau.

En 1916 seulement, les menaces senoussistes et foriennes dirigées par les ennemis de la France en Europe, mirent en danger le territoire. Une révolte au Salamat et la défection du Sila parurent préluder à une action générale prête à se déclencher en Afrique contre l'Angleterre et la France.

Tandis que les troupes françaises réduisaient le Salamat et le Sila, les Anglais anéantissaient la puissance d'Ali Dinar et refoulaient une offensive senoussiste en Libye. Agadez, assiégé par Kaossen, le vieil ennemi des Français, fut, d'autre part, délivré. Ces dangers écartés, on se borna à chasser en 1917 les derniers éléments désunis mais encore hostiles qui troublaient les confins nord du territoire.

L'année 1918 vit le rétablissement complet de la situation.

⁂

La conquête du Borkou provoqua une nouvelle répartition des unités du régiment du Tchad.

UNITÉS.	EMPLACEMENT ET RÉPARTITION.	MISSION.
1er bataillon.............	Mao....................	Bataillon du nord.
4e compagnie.............	Centre à Mao. Détachements à Bol, Rig-Rig, Moussoro, Massakory, N'Gouri (Fort-Millot). Sections méharistes à Ziguei et Yékia-Salal.	Occupation et police du Kanem et du Bahr-el-Ghazal. Escorte des convois vers le Borkou.
7e compagnie.............	Centre à Faya (Fort Berrier-Fontaine). Postes à Ain-Galakka (Fort Maurice Maignan) et Gouro.	Occupation et défense du Borkou.
8e compagnie.............	Centre à Fada Poste à Ounianga Kébir (Fort Lagrion).	Police de l'Ennedi.

UNITÉS.	EMPLACEMENT ET RÉPARTITION.	MISSION.
2ᵉ bataillon	Abéché.	Ouadai.
1ʳᵉ compagnie	Centre à Abéché. Poste à Am Guéréda.	Compagnie de garnison et d'instruction pouvant fournir une section de 50 hommes pour marcher éventuellement avec la section d'artillerie ; une section d'occupation à Am Guéréda qui est en même temps soutien de la cavalerie.
10ᵉ compagnie	Centre à Biltine. Poste à Arada.	Action sur le Zagheoua, le pays Kodoi et les pâturages à Oum-Chalouba. Escortes vers Fada.
11ᵉ compagnie	Toumtouma	Occupation de la région Massalit impartie au Ouadai.
12ᵉ compagnie	Goz Beida	Occupation du Sila.
Section mixte d'artillerie	Abéché. Pièce détachée à Ounianga.	
Escadron	Am Guéréda.	
3ᵉ bataillon	Fort Lamy	Batha, Chari, Salamat.
5ᵉ compagnie	Centre à Oum Hadjer. Postes à Harase, Mangalme, Am Dam.	Occupation du Moyen-Batha.
3ᵉ compagnie	Centre à Ati. Poste à Mongo.	Occupation du Batha inférieur.
4ᵉ compagnie	Centre à Fort-Lamy. Postes à Mousgoum et Maoi.	Compagnie de garnison et d'instruction.
6ᵉ compagnie	Centre à Fort-Archambault. Postes à Moïssala, Bédiondo, Goundi et Kyabé.	Occupation des pays sara
9ᵉ compagnie	Centre à Am Timan. Postes à Aboudeia et Kouga.	Occupation du Salamat et du Rounga.

La guerre européenne et l'ouverture des hostilités au Cameroun allaient d'ailleurs modifier profondément cette organisation.

Le colonel Largeau, auquel toute liberté d'action avait été laissée, envisageait la possibilité d'une action dans le nord du Cameroun. Il prescrivit en conséquence, la concentration à Fort-Lamy de tous les éléments disponibles[1].

Les événements d'Europe, d'ailleurs peu connus des indigènes et dont ils ne pouvaient estimer l'importance, n'eurent aucune influence sur la situation politique du Tchad pendant les premiers mois de la guerre. La nouvelle de l'intervention de la Turquie dans la lutte ne causa aucune émotion.

II. — ÉVÉNEMENTS DU FRONT NORD : TIBESTI-BORKOU-ENNEDI.

Sur le front nord la propagande allemande chez les dissidents tripolitains et les excitations turques à l'adresse de la Senoussiya, la proclamation de la guerre sainte et la formation de bandes armées senoussistes hostiles à la France n'avaient pas encore fait sentir leurs effets. Par contre les Toubbou pillards étaient singulièrement tentés par les convois de ravitaillement du Borkou ainsi que la reprise du trafic caravanier. Les opérations militaires sur ce front en 1914 et 1915 prirent la forme de contre-rezzous souvent heureux.

Aucun danger n'apparaissait du côté de Koufra; au contraire, une première caravane apporta une lettre de Mohammed el Habib, frère du grand-maître de la Senoussiya, exprimant le désir de voir la paix s'établir et les routes s'ouvrir de nouveau au commerce.

Mohammed Erbeïmi, chef des Gouroa de Gouro, parti en dissidence depuis l'occupation, demanda l'aman mais ses sujets ne le suivirent qu'en partie. Le capitaine Lauzanne explora en juin-juillet 1914 la région de Modiounga, infligeant aux Gouroa des pertes et visita en octobre la région de Tiggui (versant sud de l'Emi Koussi) où il obtint la soumission des Doza.

---

[1] Disponibles de la 4e compagnie et de la 12e compagnie, qui évacua Goz Beïda; section mixte d'artillerie, puis éléments des 6e et 9e compagnies. L'escadron vint renforcer ces éléments en octobre 1914.

Mais, sous l'influence turque, l'attitude des Senoussistes se modifiait peu à peu. Mohammed Erbeïmi reprit la dissidence. Ses gens attaquèrent le 18 novembre 1914 le campement de Gouro. Poursuivis par le lieutenant Mouret-Lafage ils firent front, et cernèrent le petit détachement[1] à 25 kilomètres de Gouro. Par une vigoureuse charge à la baïonnette, le lieutenant se dégagea. Les dissidents s'enfuirent laissant 10 morts sur le terrain.

Le 12 mars 1915, un fort rezzou attaqua un convoi d'Ouled Sliman arrêté près du petit poste de Yékia. Ce poste établi en un des points les plus désolés du Sahara sur le trajet Zigueï-Borkou, était défendu par le caporal indigène Bakary Kamara avec 13 tirailleurs. Cette affaire mit en lumière une fois de plus, les belles qualités des Sénégalais, même livrés à eux-mêmes, devant un ennemi très supérieur en nombre.

Le rezzou venant d'Abo, fort de 80 hommes, avait pris pour objectif les chameaux du convoi. Laissant trois tirailleurs, sous les ordres d'un première classe, derrière les murs du poste pour en assurer la défense, le caporal Bakary Kamara marcha avec dix hommes sur le rezzou qui avait déjà enlevé le gros du troupeau pâturant à quelque distance du poste. Avec un mépris du danger et une assurance admirables, Bakary Kamara, faisant manœuvrer sa petite troupe, tenta de déborder le rezzou. Avec trois tirailleurs seulement, il chargea à la baïonnette un des groupes de pillards qui lui abandonna 120 chameaux. Le rezzou, battant en retraite emmenait encore 206 chameaux. Avec sept hommes, Bakary Kamara entama la poursuite, progressant lentement de dune en dune et répondant au feu de l'ennemi qui faisait front pour permettre l'écoulement des animaux.

La nuit allait venir. Bakary Kamara, dont les tirailleurs étaient exténués, tenta un dernier effort. Les razzieurs formaient à ce moment une ligne longue de six cents mètres dont le centre, établi sur une crête d'une dune élevée, dirigeait un feu nourri sur la petite troupe. Le caporal donna rapidement ses ordres. Accompagné du tirailleur Alakagui Samaké, il déborda la gauche ennemie pendant que le tirailleur Massagira Sougoudou exécutait seul le même mouvement sur la droite. Les autres tirailleurs attaquaient de front. L'ennemi battait en retraite. La nuit était venue. Le rezzou, quoique encore proche, avait disparu. Ne pouvant poursuivre à cause de l'obscurité et du vent qui effaçait les traces, le caporal rassembla ses hommes pour rentrer au poste. Il s'aperçut alors de la disparition du tirailleur Mamadou Touré qui fut trouvé mort au pied de la crête occupée en dernier lieu par le rezzou.

---

[1] 19 tirailleurs.

Il avait reçu une balle entre les deux yeux et une autre au genou droit, au moment où, escaladant la crête, il prononçait, suivant les ordres de son caporal, «son attaque de front».

⁂

Malgré l'activité des méharistes, la sécurité des lignes de communications restait précaire. Les pillards trouvaient dans les populations dissidentes de la région montagneuse de l'Emi Koussi un milieu favorable pour la formation des rezzous et un refuge pour refaire les animaux et abriter les prises.

Il devenait nécessaire de chasser les dissidents du massif ou de les réduire.

Une action fut décidée en 1915. La section méhariste du Kanem reçut mission d'explorer le secteur Egueï-Gouro-Miski.

L'action dans le secteur Gouro-Kozen-Goumeur fut confiée à la section méhariste d'Ounianga; celle à mener dans le secteur Borkou-Koussi, à celle de Faya.

La section d'Ounianga, retenue dans les environs de ce poste par un passage de caravane, ne put participer à l'opération. Le capitaine Lauzanne, avec la section du Borkou, dut prendre à son compte le secteur oriental du Tibesti.

Parti de Faya le 8 avril 1915, le capitaine Lauzanne avec 40 méharistes et 20 goumiers se dirigea sur Gouro. Quoique surveillé dans tous ses mouvements par les guetteurs dissidents, il put, après de longues marches de nuit, enlever à Modiounga le campement du chef de Gourign, rebelle, et bousculer le campement de Ouada, second de Mohammed Erbeïmi, à Binem.

Le 28 avril, de nouveaux campements de dissidents pourchassés depuis Binem allaient être atteints dans la vallée rocheuse d'Ouri, quand une tornade sèche, soudaine et imprévue, balayant toutes traces, enveloppa le détachement d'un nuage de poussière. A la faveur de ce phénomène qui impressionna fortement les hommes, les dissidents, démoralisés, purent s'enfuir, mais chacun droit devant soi, sans vivres et sans eau dans le désert.

Arrivé à Gouro le 13 mai, le capitaine Lauzanne en repartit le 19 pour l'Emi Koussi dont il commença à gravir les pentes. Laissant les chameaux et les bagages sous la garde du sergent Amboroko Karembé, le détachement arriva après 22 heures d'escalade au plateau de Kohor enserré par les bords de l'ancien cratère de l'Emi Koussi à 3.300 mètres d'altitude.

Plusieurs campements dissidents s'y trouvaient qui furent capturés. La reconnaissance rentra le 8 juin à Faya.

De son côté, la section méhariste du Kanem, sous les ordres du capitaine Tranchant, s'était portée en avril sur Goury, Yao. Le 12 avril, elle rencontrait des traces de rezzou, qu'elle suivit. Après une marche de 230 kilomètres exécutée en quarante-neuf heures (dont trente-neuf heures de marche proprement dite) la section atteignit le rezzou qui se dirigeait vers le Kanem. Le capitaine Tranchant attaqua à la baïonnette; les survivants disparurent dans toutes les directions. Le rezzou avait perdu le cinquième de son effectif, la plupart de ses animaux, ainsi que toutes les prises faites depuis son départ du Tibesti.

Ces brillants résultats garantirent la paix pour quelques mois. Vers juillet 1915, des bruits de repli et d'abandon du Borkou par les Français furent colportés par les émissaires des Senoussistes qui promirent, en outre, la venue d'une forte harka sous les ordres de Mohammed Sunni. L'espoir revint chez les dissidents et effaça le souvenir des échecs subis. Les renseignements indiquèrent de forts rezzous en préparation. Il fallut continuer le harcèlement des dissidents pour prévenir leur attaque et les traquer dans leurs retraites.

Le commandant Tilho, chef de la circonscription du Borkou, décida d'agir dans la vallée de Miski, place de rassemblement naturelle des rebelles, isolée par des défilés rocheux considérés comme infranchissables.

La reconnaissance, sous les ordres du commandant Tilho avec le lieutenant Fouché, le docteur Guidicelli, le sergent Cordelette, 45 tirailleurs et 15 goumiers quitta Faya le 4 septembre 1915 et atteignit le sommet de l'Emi Koussi, le 15 septembre. Après avoir fouillé les fonds du cratère, évacué par les dissidents, elle se porta sur la vallée de Miski.

Laissant dans cette vallée la moitié du détachement sous les ordres du lieutenant Fouché, le commandant Tilho explora avec l'autre fraction la région de Yebbi, puis, passant par la vallée de Zoumeri, effectua la liaison avec un détachement de troupes de l'Afrique occidentale française du lieutenant Blaizot qui occupait Bardaï.

Revenant par Modra, la reconnaissance effectua une deuxième liaison avec les forces de Zouar (lieutenant Campenon). Elle revint à Faya le 12 novembre ayant parcouru 1.500 kilomètres en pays montagneux et inconnu. En plusieurs rencontres, notamment à Yebbi et à Modra (lieutenant Fouché) les dissidents refoulés durent abandonner des prisonniers et des blessés. En outre, le commandant Tilho rapportait les éléments d'une première carte du Tibesti et des observations scientifiques du plus haut intérêt sur ce pays en partie inexploré.

CHAPITRE II.

1916.

I. Confins nord : Borkou-Ennedi.

II. Opérations au Ouadaï : Sila-Salamat.

Le général Largeau avait quitté son commandement le 27 juillet 1915, confiant l'administration du territoire à l'administrateur des colonies M. Merlet et le commandement des troupes au lieutenant-colonel Briand. Le calme était complet.

Cependant, dans l'est, la révolte couvait. Des rumeurs concernant l'arrivée de prétendus contingents turcs au Ouadaï et au Borkou se propageaient. Secrètement travaillés par les Senoussistes, Ali Dinar, sultan du Dar Four, et Bakhit, sultan du Sila, changèrent d'attitude. Pour parer aux dangers qui paraissaient se préciser tant au Borkou que sur la frontière du Ouadaï, les garnisons de Faya et de Fada furent renforcées. Une nouvelle compagnie méhariste fut formée au Kanem, prête à se porter sur le Borkou en cas de besoin. La 5e compagnie à Oum Hadjer fut rattachée au Ouadaï et placée sous les ordres du lieutenant-colonel Hilaire[1].

I. — CONFINS NORD : BORKOU-ENNEDI.

En mars 1916, un rezzou de 120 fusils venu à Tékro fit craindre l'arrivée prochaine de forces senoussistes plus importantes. Deux reconnaissances furent envoyées; l'une, fournie par la 7e compagnie (Faya), commandée par le capitaine Lauzanne, l'autre, par la 8ᵉ compagnie (Fada) sous les ordres du capitaine Châteauvieux.

---

[1] En outre de ces mesures, les 1re, 10e et 11e compagnies furent renforcées. La 2e compagnie forma avec les recrues les 16e, 17e et 18e compagnies. Une compagnie venue de Zinder prit le n° 15.

La première reconnaissance recoupa les traces des pillards et se lança à leur poursuite. Le rezzou ayant trop d'avance put se réfugier dans la montagne.

Le capitaine Châteauvieux, de son côté, surprit le campement de Mohammed Erbeïmi. Attaqué, celui-ci parvint à s'enfuir avec tout son monde, laissant entre les mains de l'officier français le khouan Bou Gheit venu de Koufra prêcher la résistance aux rebelles.

Dans les mois qui suivirent, les coups de mains des dissidents se multiplièrent, d'autant plus audacieux que la menace senoussiste et forienne se précisait. Les unités se rassemblèrent pour faire face aux fortes harkas signalées, les patrouilles de police furent suspendues.

Le 21 juillet 1916, sur la foi de renseignements indigènes présentant comme imminente une attaque de Bardaï, le sous-lieutenant Lenoir, commandant ce poste, se replia sur Zouar. Croyant la route de Bilma coupée, cet officier décida le sous-lieutenant Dufour, commandant le poste de Zouar, à le suivre sur Faya. Les deux détachements arrivèrent à Faya le 22 août.

Pour prévenir les infiltrations ennemies qui pouvaient se produire par le Tibesti, de nouveaux renforts prélevés sur le Ouadaï furent envoyés au Borkou. Le 18 août, le colonel Hilaire, ayant laissé le commandement du Ouadaï au chef de bataillon Cros, quitta Abéché à destination de Faya avec 100 méharistes, 4 mitrailleuses et de l'artillerie. Un renfort était également acheminé du Kanem sur le Borkou.

Du côté de l'Ennedi, les dissidents rendus plus agressifs par les bruits tendancieux répandus à profusion furent contenus grâce à l'activité des sections méharistes du Ouadaï et de l'Ennedi.

En juillet, le chef gaëda Hassi Sougoumeddi enleva un campement bideyat près de Fada. Poursuivi énergiquement, le rezzou fut rejoint et dispersé ayant perdu la presque totalité de ses prises. Mohammed Erbeïmi réapparut en octobre à la tête de 800 hommes. Atteinte par la section méhariste de la 7ᵉ compagnie, sa bande fut en partie détruite. Erbeïmi blessé s'échappa à grand peine.

En résumé, fin 1916, la situation sur cette frontière restait sinon grave tout au moins inquiétante.

CHAPITRE III.

1917.

L'arrivée des renforts venus du Ouadaï et du Kanem en septembre 1916, le passage à Faya du colonel Hilaire, commandant militaire du territoire, avaient produit sur les populations du Borkou une impression considérable.

Le commandant Tilho pensa le moment venu d'assainir les confins. Fin novembre, des détachements furent envoyés :

Un détachement en surveillance dans la région de Domar, frontière nord-ouest du Borkou (sous-lieutenant Dufour);

La section méhariste de Faya vers Tékro (adjudant Amboroko Karembé);

La section de Fada dans la dépression du Mourdi (capitaine Châteauvieux).

Ces trois reconnaissances bousculèrent partout les dissidents. Le 5 décembre, le sous-lieutenant Dufour défaisait à Korrom[1], au cours d'un engagement assez vif, un fort parti; le 13, il visitait l'enneri Marmar. Cet officier fut blessé dans une nouvelle rencontre où les dissidents furent encore dispersés.

De son côté, l'adjudant Amboroko Karembé s'était rendu dans la région Tékro-Arouelli. Ayant appris la présence de Mohammed Erbeïmi à 200 kilomètres dans l'est, il marcha contre lui. En trois jours, il atteignit le point désigné. Le chef rebelle en était parti depuis deux jours, faisant une route en sens inverse, parallèle à la sienne. La poursuite recommença. Pendant cinquante-trois heures, n'ayant pris que deux heures de repos, le détachement marcha sans arrêt et arriva en pleine nuit au contact du campement rebelle. Éventé, Amboroko brusqua son attaque et enleva ses tirailleurs à la baïonnette. Les Toubbou perdirent des tués, des blessés et presque tous leurs chameaux.

---

[1] Enneri affluent de droite du Miski.

Amboroko Karembé était à peine rentré à Faya qu'un nouveau rezzou fut signalé vers Madadi. Un détachement frais partit sous les ordres de l'adjudant Moussa Diara. Le 6 janvier 1917, au matin, il rencontra les pillards au puits de Berchi Guélé. Ceux-ci opposèrent d'abord une résistance sérieuse, se repliant en combattant dans une région rocheuse favorable à la défensive. Bien que supérieurs en nombre, ils furent cependant contraints à la fuite [1]. Un nouveau rezzou, pris en chasse par Moussa Diara, l'amena le 13 janvier à Goumeur sur la route du Mortcha. Il y surprit le rezzou, l'attaqua à la baïonnette et le détruisit complètement.

Dans l'Ennedi, le capitaine Châteauvieux bouscula les dissidents dans l'Erdebé et les dispersa au cours de quatre engagements, leur infligeant des pertes considérables en animaux.

Cette série de reconnaissances fut complétée par l'envoi d'un deuxième détachement en janvier 1917 sur Zouar. Le sous-lieutenant Hébréard, à la tête de 40 méharistes, y fit sa jonction avec les troupes de l'Afrique occidentale française et dispersa de nouveaux rassemblements rebelles qui s'étaient reformés dans la région de Domar après le départ du sous-lieutenant Dufour.

La sécurité ne pouvait être complète tant que des chefs dissidents, comme Mohammed Erbeïmi, pouvaient espérer la venue prochaine d'une force senoussiste. Un contingent d'une cinquantaine d'hommes venait encore d'arriver de Koufra sous les ordres du chef khouan Rheit Bou Kreïm et restait en observation dans l'Erdi-Ma. Avec la complicité d'un chef félon du Mortcha qui avait donné les renseignements nécessaires, Mohammed Erbeïmi attaqua un convoi de mil dirigé de Oum Chalouba sur Faya et escorté par quinze tirailleurs sous les ordres d'un sergent indigène. Surpris à Goumeur le 7 mars à l'aube, les tirailleurs se défendirent bravement. Douze d'entre eux dont le sergent furent tués et le convoi fut enlevé. Le coup fait, Erbeïmi se retira en hâte vers le nord.

Depuis deux jours, l'adjudant Amboroko Karembé recherchait ce rezzou. Il l'atteignit le 7 au soir. Après un court combat par le feu, il l'aborda à la baïonnette. Les rebelles s'enfuirent en abandonnant le convoi. Amboroko tibestien, fut rencontrée le 18 avril par un convoi allant du Borkou vers le Kanem sous les ordres du capitaine Ogier. Cet officier, secondé par le lieutenant Hébréard, attaqua aussitôt. Pour assurer sa fuite, le rezzou fut contraint de lâcher les prises faites au Mortcha, notamment 10 personnes emmenées en captivité.

---

[1] Emporté par son ardeur, le tirailleur Zandiougou s'était fait tuer bravement. Ses camarades, accourus pour le dégager, livrèrent une lutte sauvage autour de son corps.

Ces échecs répétés amenèrent, chez les Mourdia en particulier, un grand découragement. Leurs pertes en hommes et en bétail étaient élevées. Des négociations s'ouvrirent avec le commandant de la 8ᵉ compagnie qui accorda l'aman.

Il en fut de même au Tibesti oriental où de fortes patrouilles ne cessèrent de rayonner à grande distance autour de Faya avec le concours d'auxiliaires recrutés parmi les tribus antérieurement razziées par les dissidents (combats de Goubone et Meskou en mai 1917). Les chefs Guetty, de Zouar, et Maï Chafami, de Bardaï, sollicitèrent l'aman.

Mohammed Erbeïmi lui-même alla à Koufra demander des renforts en hommes et en armes. Il n'y trouva aucune aide. Ahmed Chérif interdisait désormais toute agression contre les confins du Tchad, redoutant sans doute une riposte sur Koufra. Dès les premiers jours de 1918, les Khouans encore au Tibesti étaient rappelés dans la citadelle senoussiste.

Déçu, Erbeïmi rejoignit sa bande, forte de 200 hommes environ, à Ouri. Contournant l'Ennedi à grande distance, il vint razzier les campements d'Am Djérès en décembre 1917. Le coup fait, il retraita vers le nord avec un maigre butin. Lancé sur ses traces, un détachement de méharistes de la 8ᵉ compagnie,[1] le rejoignit le 8 janvier 1918, l'attaqua malgré la disproportion des forces, lui tua 30 hommes[2] et le força à lâcher ses prises.

Au Ouadaï, l'assassinat d'un maréchal des logis français en octobre 1917 fit découvrir et avorter un complot tramé par les anciens dignitaires. Ce complot devait éclater en même temps qu'un mouvement au Massalit pour détrôner le sultan Andoka, l'allié des Français. L'agitation qui en résulta fut rapidement étouffée. Pour être plus à portée du Massalit, le poste de Toumtouma fut transporté à Adré.

---

[1] 20 tirailleurs sous les ordres du sergent Béchir.

[2] Combat de l'ouadi Azrenga.

Pendant les année qui suivirent de nombreuses modifications furent apportées à cette répartition. Certaines circonscriptions passèrent à l'administration civile.

Enfin, le territoire du Tchad qui, en 1916, avait cessé de dépendre de la colonie de l'Oubangui-Chari (décret du 12 avril 1916), était, au 1er janvier 1921, érigé en colonie ayant à sa tête un lieutenant-gouverneur. Le lieutenant-colonel Bertrand, successeur du colonel Ducarre, transmit ses pouvoirs au lieutenant-gouverneur Lavit au début de 1921.

⁂

Sur les confins nord de la colonie, les rezzous se hasardèrent encore à certaines saisons, après les rares pluies annuelles qui remplissent les gueltas et redonnent quelque vie aux maigres pâturages.

Partant pour la plupart de Gatroun ou de Tummo, dans une région non soumise à l'influence française, ils venaient refaire leurs animaux avant de prononcer leur attaque dans la région d'Abo, où la surveillance était difficile depuis l'abandon du Tibesti.

En avril 1919, le lieutenant Thomas, commandant une des sections méharistes de la 7e compagnie, visita les enneris de la lisière méridionale du Tibesti jusqu'à Domar. Au cours de cette tournée, cet officier rejoignit et détruisit, après une poursuite de vingt heures, l'avant-garde d'un rezzou touareg et fit avorter les agressions combinées de cinq rezzous.

En juillet, d'autres rezzous étant signalés en formation au Tibesti, le lieutenant Thomas, à la tête de trois sections méharistes de la 7e compagnie, se porta en couverture du Borkou. Ayant appris son mouvement, les razzieurs n'osèrent pas continuer leur marche et se dispersèrent. Le lieutenant les suivit dans leur retraite et captura quelques-uns des dissidents. Guidé par un prisonnier, le détachement fut malheureusement entraîné dans le désert et égaré. La dernière goutte d'eau épuisée et les tirailleurs à bout de forces, le lieutenant Thomas, soutenu par la volonté de sauver son détachement, partit seul en avant. Trouvant par bonheur des traces de chèvres, il les suivit et arriva à une mare. Il y avait cinquante et une heures qu'il n'avait pas bu. La chaleur avait été atroce; depuis soixante-dix heures il n'avait pas mangé. Ses tirailleurs l'ayant rejoint, la reconnaissance fut poursuivie. Des pertes furent infligées aux troupeaux des dissidents.

laissant sur le terrain 17 tués. Du côté français, le caporal indigène était tué, un tirailleur et un guide étaient blessés.

Ayant perdu tous ses animaux, tués par l'ennemi, et encombré par ses blessés, Poletti ne put poursuivre avec ses 5 tirailleurs valides.

Quelques rezzous furent encore signalés par la suite mais en nombre décroissant.

Une nouvelle organisation fut donnée aux sections méharistes en 1924; elles furent réunies en trois groupes nomades, au Kanem, au Borkou et dans l'Ennedi, comprenant chacun deux sections de combat montées à chameaux et un groupe de mitrailleuses.

Dans le Moyen-Chari, après la suppression du poste de Koumra, au début de 1929, les indigènes de la région marécageuse du Mandoul manifestèrent quelque indépendance. Cette région d'accès difficile, inondée une partie de l'année et couverte de hautes herbes, était en même temps le refuge de nombreux malfaiteurs. En un mois, de février à mars 1929, la 12e compagnie rétablit l'ordre.

⁂

L'avance italienne en Tripolitaine insoumise provoqua dès 1928 un exode de populations nombreuses qui vinrent se réfugier en territoire français.

Pour éviter la formation au Tibesti de rassemblements non contrôlés, l'occupation de ce massif fut décidée et confiée aux troupes de l'Afrique équatoriale française.

De décembre 1928 à mars 1929, le chef de bataillon Aubert, commandant la circonscription du Borkou, avec le groupe nomade de la 7e compagnie, sous les ordres du lieutenant Méar, effectua une reconnaissance du Tibesti dans des conditions exceptionnellement difficiles. Il opéra sa liaison près de Bardaï avec le chef de bataillon Rottier venu de Bilma.

Une compagnie fut créée pour occuper Bardaï et un nouveau groupe nomade fut chargé d'assurer la sécurité du versant méridional du Tibesti, d'Abo à Zouar.

La nouvelle compagnie[1], commandée par le capitaine Vicaire, occupa

---

[1] 6e compagnie.

Bardai au début de novembre 1929 en même temps que le nouveau groupe nomade, en liaison avec les méharistes de l'Afrique occidentale française, établissait un poste grenier à Sherda et poussait des reconnaissances vers Abo.

De nombreux réfugiés tripolitains furent recueillis, désarmés et dirigés sur certains points du territoire où leur contrôle pouvait être assuré.

Au 1^{er} janvier 1930, la répartition des unités du régiment de tirailleurs sénégalais du Tchad était la suivante :

UNITÉS.	EMPLACEMENTS.	OBSERVATIONS.
État-major et C. H. R.	Fort-Lamy.	
Groupe II. État-major.	Abéché	Le chef de bataillon commandant le groupe est également chef de la circonscription du Ouadaï.
1^{re} compagnie	Abéché	Une section de 80 M. est rattachée à cette compagnie.
5^e compagnie.............	Goz Beida (Portion centrale). Am Dam.	Subdivision du Sila ; comprend une section montée.
10^e compagnie............	Biltine.	Subdivision de Biltine.
11^e compagnie............	Adré	Subdivision d'Adré ; comprend une section montée.
Groupe III. État-major.	Faya	Le chef de bataillon commandant le groupe est chef de la circonscription du Borkou-Ennedi-Tibesti.
7^e compagnie.............	Faya. Oum Chalouba.	Subdivision du Borkou ; compte un groupe nomade.
8^e compagnie.............	Fada. Ounianga.	Subdivision de l'Ennedi ; compte un groupe nomade.

UNITÉS.	EMPLACEMENTS.	OBSERVATIONS.
6e compagnie.............	Bardai..................	Subdivision du Tibesti; compte un groupe nomade avec postes greniers à Sherda, Abo.
4e compagnie.............	Mao. Moussoro. N'Gouri. Rig-Rig. Bol.	Unités hors groupe dont le capitaine est chef de la circonscription du Kanem; comprend une section montée, une section de 80 M., un groupe nomade avec poste grenier à Ziguei.
3e compagnie.............	Ati. Oum Hadjer.	

Le groupe I, formé au 1er janvier 1930 à Bangui[1], comprend les 9e, 12e, 13e et 2e compagnies du régiment. Ce groupe est entièrement stationné dans l'Oubangui-Chari et le Moyen-Chari.

---

[1] Voir plus haut page 224.

Exhibit LC-M 14

اولا : الحكم العثمانى فى ليبيـــــا

امتداد السلطة من اعلى الى اسفل + سلطاتهم

الباب العالـــــى

الوالى (في ليبيـــا)

المتصرف (فى بنغازى)

المديـــــــر

القائم مقام

.... الخ

ثانيا: السنوسية (ترتيبهم) حسب الدرجات

الشيخ السنوسى / رئيس الزوايـــــــا بالجغبوب

كبار الاخوان (اثنى عشر شخصا يقومون بالتدريس للطلبة والاشراف على سير الامور

مشائخ الزوايا كل مسؤول عن زاوية فى مناطق خارج الجغبوب

نواب مشائخ الزوايا الاشراف على كافة شؤون الزاوية

حوله مجلس من شيوخ القبائل للمنطقة الموجودة بها الزوايا يجتمعون لحل المشاكل بين القبائل والمشاكل العادية .

الوالى
ويحمل لقب الباشا

وقسمت الولاية الى عدد من الالوية او (السناجق) وعلى رأس كل منها متصرف يمثل الوالى فيها

وقسمت الالوية (السناجق) الى اقضية يدير كلا منها قائمقام

وقسمت الاقضية الى نواح فى كل منها مدير ناحية

وارتبط هولاء الموظفون جميعا بطريقة التسلسل الادارى .
مدير الناحية بالقائمقام ، والقائمقام بالمتصرف ، والمتصرف بالوالى، والوالى بوزير الداخلية فى استانبول .

ويساعد الوالى عدد من الموظفين بينهم القاضى وهو نائب الحاكم ومعاون (متسلم)
ومدير المحاسبة والشوون المالية (الدفتر دار)
وامين عام (مكتوبجى وكيخيا)
ومدير الشوون الاجنبية (اجنبى مديرى)
ومدير المعارف
وباش مهندسين (رئيس المهندسين)
ومدير اوراق
ومأمور طابور
ومدير املاك الدولة
ومدير اوقاف
وآلاى بك ي(قائد الدرك)
والحق باكثر هولاء عدد من الاقلام الكتابية ضمت عددا من صغار الموظفين .
وبقى القاضى الشرعى محتفظا بمكانته واهميته كاكبر شخصية رسمية بعد الوالى ، وان شكلت محاكم جديدة مستقلة عنه .

ادارة
متصرفية بنغازى
حسب وثيقة تونسية 1292هـ ـ 1875م

المتصرف

برتبة بيلربى . او امير امراء
ومعه : القاضى (حاكم الشرع الشريف)
ومحاسبةجفى مأمور المالية
ومدير تحريرات (باش كاتب بالقلم التركى)

دوائر الحكومة فى متصرفية بنغازى آنذاك

1ـ مجلس الادارة يرأسه المتصرف
ومعه : القاضى والمحاسبة جى ، ومدير تحريرات ، وناظر الاوقاف واربعة اعضاء وكاتب عربى
2ـ مجلس الحقوق والجنايات : يرأسه القاضى . كاتبان وخمسة اعضاء
3ـ المحكمة الشرعية : تحت نظارة القاضى ومعه اثنان من العدول
4ـ مجلس التجارة : مركب من رئيس وباش كاتب ، وكاتب ثانى وعضوين دائمين ، واربعة اعضاء موقتين ، اثنان من اتباع الدولة ، واثنان من الاجانب .
5ـ مجلس البلدية : مركب من رئيس ووكيل وكاتب ، وصرف وستة اعضاء مناعيان البلد

((ظلت برقة حتى سنة 1836 قائمقامية (قضاء) تابعا لولاية طرابلس . وفى سنة 1863 اصبحت متصرفية تابعة مباشرة للاستانة . وعادت فى سنة 1871 لتكون تابعة لولاية طرابلس . وفى العام التالى اصبحت ولاية تابعة للاستانة ، ثم عادت فى سنة 1888 متصرفية تابعة للاستانة . وكان يدير (السنجق) متصرف ، و(القضاء) قائمقام و(الناحية) مدير)) روسى ص 385

1. The Ottoman rule in Libya
   Extent of authority from above to below + powers

   Sublime Porte

   Governor (vali) (in Libya)
   District governor (mutasarrif) (in Benghazi)
   Administrator (mudir)
   District officer (qaimaqam)
   etc

2. The Senussis (grading according to rank)

   Senussi sheikh (head of the zawiyas in Jaghboub)
   Senior brothren (twelve individuals who trained students and supervised the running of affairs)
   Sheikhs of zawiyas (each responsible for a zawiya in areas outside Jaghboub)
   Deputy sheiks of zawiyas (supervision of all the affairs of the zawiya)

   There was a board of sheikhs of the tribes of the region holding the zawiyas, who met to solve tribal and ordinary problems

The Vali (Governor)
who held the title of Pasha

A province (vilayet) was divided into a number of districts (liwas) (or sanjaqs) each headed by a district governor (mutasarrif) who represented the vali in it.

The liwas (sanjaqs) were divided into qadas (sub-districts) each headed by a qaimaqam (district officer).

Qadas were divided into nahias (counties), each having a county administrator (mudir).

All these personnel were linked through the administrative chain: the county administrator (mudir) to the district officer (qaimaqam), the qaimaqam to the district governor (mutasarrif), the district governor to the Vali (Governor), and the Governor to the Minister of the Interior in Istanbul.

The vali was assisted by a number of staff, among them

the qadhi, who was the deputy governor and assistant (mutasallem),

the head of accounts and financial affairs (daftardar)

a general secretary (maktubji and kikhia)

a head of foreign affairs (ajnabi mudiri)

a head of education

a senior engineer (bash mohendes)

a head of documents

a (military?) detachment official (mudir tabour)

a manager of State property

a manager of wakfs (religious endowments)

and a chief of police (alay bey)

Most of these had a number of clerical departments with minor officials

The sharia qadhi maintained his position and importance as the senior official personality after the vali, although new courts were formed independent of him.

The management of Benghazi mutasarrifiya (district) according to a Tunisian document 1292AH - 1875

Mutasarrif

in the rank of bailarbi, or 'prince of princes'

together with: the qadhi (senior exponent of the Sharia)

and the muhasebatji (finance officer)

and the head Turkish clerk (mudir tahrirat)

Governmental departments in Benghazi mutasarrifiya at that time:

1) Management board, headed by the mutasarrif, together with the qadhi, the muhasebatji (finance officer), the senior clerk (mudir tahrirat), superintendent of wakfs, four members and an Arab clerk.

2) Law and criminal council: headed by the qadhi, with two clerks and five members.

3) Sharia court: under the superintence of the qadhi, with two juristic adjuncts.

4) Trade council: consisting of a chairman, a senior clerk, a further clerk, two permanent members and four temporary members (two state nationals and two foreigners).

5) Municipal council: consisting of a chairman, a deputy, a clerk, a cashier and six local notables.

Until 1836 Barca remained a qaimaqamiya (sub-district) (qada) under Tripoli province.

In 1863 it became a mutasarrifiya (district) direct under Istanbul. In 1871 it again came under Tripoli province. In the following year it became a province under Istanbul, and then in 1888 again became a mutasarrifiya under Istanbul. A sanjaq was run by a mutasarrif, a qada by a qaimaqam, a nahia (county) by a mudir (administrator). P. 385.

Exhibit LC-M 15

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

VOLUME II

NATIONS UNIES — UNITED NATIONS

The principle that continuous and peaceful display of the functions of State within a given region is a constituent element of territorial sovereignty is not only based on the conditions of the formation of independent States and their boundaries (as shown by the experience of political history) as well as on an international jurisprudence and doctrine widely accepted; this principle has further been recognized in more than one federal State, where a jurisdiction is established in order to apply, as need arises, rules of international law to the interstate relations of the States members. This is the more significant, in that it might well be conceived that in a federal State possessing a complete judicial system for interstate matters—far more than in the domain of international relations properly so-called—there should be applied to territorial questions the principle that, failing any specific provision of law to the contrary, a *jus in re* once lawfully acquired shall prevail over *de facto* possession however well established.

It may suffice to quote among several non dissimilar decisions of the Supreme Court of the United States of America that in the case of the State of Indiana *v.* State of Kentucky (136 U.S. 479) 1890, where the precedent of the case of Rhode Island *v.* Massachusetts (4 How. 591, 639) is supported by quotations from Vattel and Wheaton, who both admit prescription founded on length of time as a valid and incontestable title.

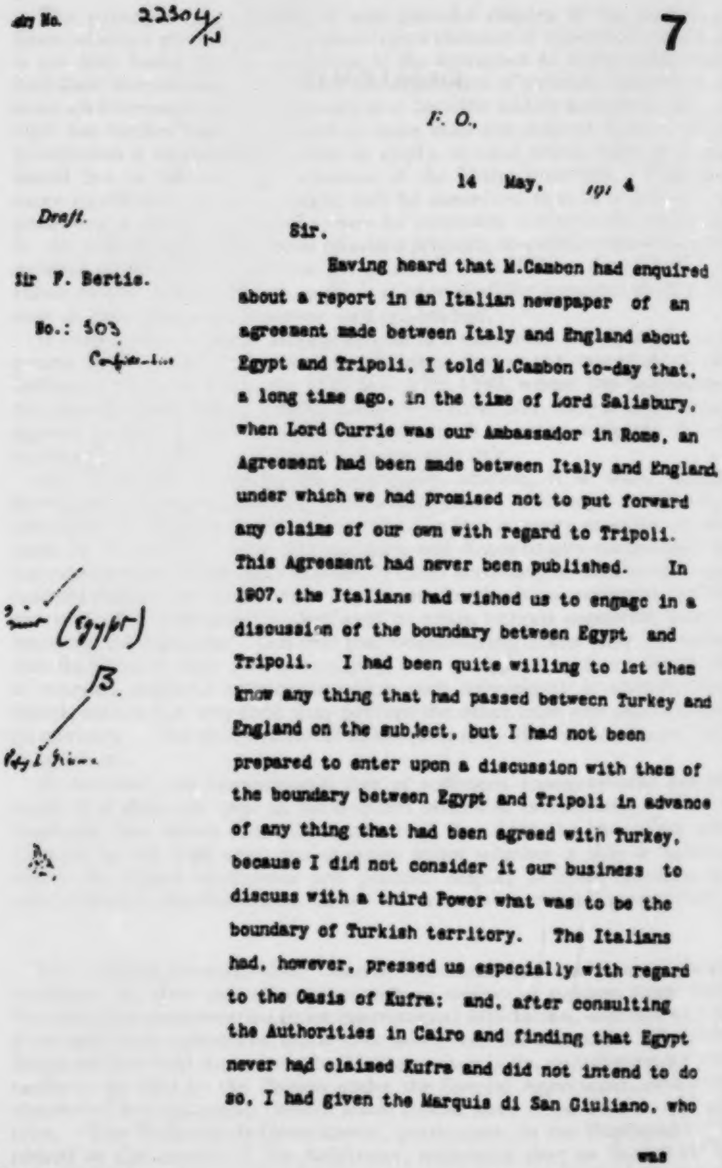
Manifestations of territorial sovereignty assume, it is true, different forms, according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas. It is true that neighbouring States may by convention fix limits to their own sovereignty, even in regions such as the interior of scarcely explored continents where such sovereignty is scarcely manifested, and in this way each may prevent the other from any penetration of its territory. The delimitation of Hinterland may also be mentioned in this connection.

If, however, no conventional line of sufficient topographical precision exists or if there are gaps in the frontiers otherwise established, or if a conventional line leaves room for doubt, or if, as e.g. in the case of an island situated in the high seas, the question arises whether a title is valid *erga omnes*, the actual continuous and peaceful display of State functions is in case of dispute the sound and natural criterium of territorial sovereignty.

•

The United States in their Counter-Memorandum and their Rejoinder maintain the view that statements without *evidence* to support them cannot be taken into consideration in an international arbitration, and that evidence is not only to be referred to, but is to be laid before the tribunal. The United States further hold that, since the Memorandum is the only document necessarily to be filed by the Parties under the Special Agreement, evidence in support of the statements therein made should have been filed at the same time. The Netherlands Government, particularly in the Explanations furnished at the request of the Arbitrator, maintains that no formal rules of evidence exist in international arbitrations and that no rule limiting the freedom of the tribunal in forming its conclusions has been established by the Special Agreement of January 23rd, 1925. They hold further that state-

Exhibit LC-M 17



7

ary No. 22304/14

F. O.,

14 May. 1914

Draft.

Sir F. Bertie.

No.: 503

Confidential

Rome (Egypt)

B.

Copy to Rome

Sir,

Having heard that M.Cambon had enquired about a report in an Italian newspaper of an agreement made between Italy and England about Egypt and Tripoli, I told M.Cambon to-day that, a long time ago, in the time of Lord Salisbury, when Lord Currie was our Ambassador in Rome, an Agreement had been made between Italy and England under which we had promised not to put forward any claims of our own with regard to Tripoli. This Agreement had never been published. In 1907, the Italians had wished us to engage in a discussion of the boundary between Egypt and Tripoli. I had been quite willing to let them know any thing that had passed between Turkey and England on the subject, but I had not been prepared to enter upon a discussion with them of the boundary between Egypt and Tripoli in advance of any thing that had been agreed with Turkey, because I did not consider it our business to discuss with a third Power what was to be the boundary of Turkish territory. The Italians had, however, pressed us especially with regard to the Oasis of Kufra: and, after consulting the Authorities in Cairo and finding that Egypt never had claimed Kufra and did not intend to do so, I had given the Marquis di San Giuliano, who

was

was then Italian Ambassador in London, the assurance recorded in paper 41979 of the 24th December 1907. This I let M.Cambon read, and I assured him that it was all that had taken place.

Having read it, he said that this was a small matter. France would prefer to see us, rather than the Italians, at Kufra: but it was outside the French sphere. He asked me whether the Italian Ambassador had spoken to me recently about Kufra.

I said that the Italian Government had approached us, in consequence of a report that Egypt was intending to occupy Kufra, and we had authorised them to deny that we had any such intention. They had gone rather further, and had asked us to use our influence with the Senussi to admit Italian authority in Kufra. This I had declined to do, because it was one thing to say that Egypt had no claim to Kufra, but it was another to make trouble for ourselves by trying to influence the Senussi to accept the Italians.

E.G.

Exhibit LC-M 19

TRANSLATION

CONFIDENTIAL **TELE-EXPRESS NO 228258**

To: **HIS EXCELLENCY ITALO BALBO**
MINISTER OF AVIATION

From: **MINISTRY OF FOREIGN AFFAIRS**
E.I.A. IV

File: Libya Rome, 30 June 1931

(Subject): **S.E. BALBO'S EXCURSION INTO THE LIBYAN DESERT**

(Text) **I have followed with the greatest interest the quite brilliant exploratory flight undertaken by a squadron of our aircraft under the command of Your Excellency into the Libyan desert, and particularly into the zone south of the Tropic of Cancer.**

This is the first time that I know of a flight made over this territory; it is to the further personal credit of Your Excellency that the Italian airforce should have achieved this record.

I therefore have particular pleasure in presenting my most sincere appreciation to Your Excellency.

The zone to the south of the Tropic of Cancer, as Your Excellency knows, forms part of the territories disputed between ourselves and France, with whom negotiations are now in progress to determine the boundaries of Libya. The observations made by Your Excellency while flying over this region could have a direct, topical bearing on the studies at present in progress at this Ministry. We should therefore be especially grateful to Your Excellency if you could briefly communicate to me that part of the report on the excursion undertaken relating to the flight over the territories to the south of the Tropic of Cancer.

Thank you in advance,

(Signature)

TRANSLATION

To: THE MINISTRY OF FOREIGN AFFAIRS
E.L.A. IV
ROME

From: MINISTRY OF AVIATION

Rome, 7 July 1931

Report N° 10730 Attached

Reply to letter of 30.06.91

Ref: 7.223253/146 R

Subject: Flight over the Libyan Desert

I am extremely grateful to Your Excellency for the congratulations that you kindly expressed to me following the flight I undertook into the southern region of Libya and to the south of the Tropic, and I am pleased to pass to Your Excellency the observations made in the course of this and already referred to His Excellency the Head of Government.

I should first of all mention that geographical maps of the area especially to the south of the Tropic, are completely inaccurate. The northern slopes of the Tibesti Massif extend much further to the north than had generally been believed, in fact up to a few kilometres from the Tropic. Our camp, established at 23°C 18' latitude north and 20°C 24' longitude east was sited amongst the rocky foothills of the Massif.

The northern part of the mountainous zone of the Tibesti is rocky throughout, inaccessible, broken up with deep ravines and without any vegetation whatever. A garrison located in a zone of this kind would find its very survival threatened. The watershed, whose highest points rise to approximately 3000 metres and above which we could not fly owing to the restricted capacity of the aircraft which could depend only on the fuel on board, appeared to the eye to be covered with some traces of vegetation.

Anyhow, with regard to the demarcation of the southern boundary of Libya, it would seem wise on grounds both of expediency and for ease of demarcation, to insist perhaps that the boundary be fixed at least along the watershed line of the Tibesti. However, in view of the fact that the oasis of Koufra and Fezzan are best defended by the desert surrounding them on all sides, I feel that one could agree to consider certain concessions in the area in exchange for more useful corrections of the border in the Ghat area, which seems to me to have been violated by the French, whose small posts and camel patrols have already invaded part of the territory originally occupied by Turkey.

I am always at your disposal should you require further information.

The Minister Balbo

(Signature)

TRANSLATION

Rome, 11 July 1931/IX

Mr. Ambassador,

In reply to Your Excellency's letter of 2 June I have pleasure in advising you as follows:

His Excellency General Balbo in the course of his recent aeronautical inspection in Libya camped on his way from Koufra at a desert site close to Duadi el Fardi which, according to enquiries made, is located at latitude 23.18 north and longitude 20.24 east. This site lies in territory which is undisputedly Italian.

From this site His Excellency General Balbo made a flight to the south for the simple purpose of geographical recognition with a precise geographical survey and given the absence of secure markings on the ground in a zone which is almost entirely unknown, there was no way of ascertaining precisely through over what regions His Excellency General Balbo passed on during his flight. It was only possible to establish that it took place over areas of desert and the outcrops of the mountainous Massif of the Tibesti. This being so and since the frontiers in these regions between French Equatorial Africa and Tripolitania have not yet been determined, it would be difficult to ascertain precisely whether His Excellency General Balbo always stayed within the limits of Italian territory during his flight as was his intention.

Had His Excellency General Balbo wanted deliberately to pass beyond these limits, he would most certainly have requested the necessary authorisation in accordance with the international rules applying.

In the circumstances, I feel that Your Excellency will recognise, as I do, that His Excellency General Balbo's flight cannot be regarded but in the light of the loyal assistance given by the authorities and French troops to the Fezzan expeditionary force and, the more so, of the cordial relations existing between the French and Italian posts on the western boundary of Libya and the policy of co-operation between the authorities of the two countries to which the French Government, like the Italian Government, properly attaches the greatest value.

Sincerely,

Grandi

TRANSLATION

CONFIDENTIAL — **TELE-EXPRESS NO 223806**

Rome, 20 July 1931

To: MINISTER OF COLONIES
(OFFICE I, NORTH AFRICA)

From: MINISTRY OF FOREIGN AFFAIRS
E.L.A. IV

File: Libya 78

(Subject) H.E. BALBO'S FLIGHT TO THE SOUTHERN BOUNDARIES OF LIBYA

(Regarding) Telegram from the Ministry number 224881/198 of 13/7/31

(Text) For Your Excellency's further information, I have pleasure in enclosing a copy of a letter sent by the French Ambassudor in Rome to this Ministry in reply to the Minister H.E. Grandi concerning the flight recently undertaken by Mr. Balbo to the southern boundaries of Libya.

(Signature)

TO: **ITALIAN MINISTRY OF FOREIGN**
AFFAIRS
E.L.A.

From: **MINISTRY OF THE COLONIES**
GENERAL DIRECTION FOR
NORTHERN AFRICA
OFFICE FOR POLITICAL
AFFAIRS

Telegram Express N°65909 **23 July 1931**

(Text) FLIGHT BY GENERAL BALBO TO THE SOUTHERN FRONTIERS OF LIBYA

Regarding Express Telegram N° 22580 of 20.7.31

This Ministry takes note of your reply to the note of the French Ambassador of 2 July concerning the aerial excursion undertaken by General Balbo and sees from it that your Excellency has properly taken the opportunity to mention the absence of any territorial delimitation between the Italian and French possessions in the area flown over.

In this connection we would draw your Excellency's attention to the article by Gentizon in the "Temps" of 18 July 1931 which has certainly already been brought to Your Excellency's attention. In Benghazi in my and your presence, it contains a serious ambiguity which should not be left without a reply. It is true, in fact, that General Graziani recognised the spirit of cordiality and friendship existing in the mutual relations between the Italian and French posts in the Tripolitanian hinterland, referring in particular to those along the Tunisian and Algerian borders. However, it is clear that all this has no connection with the question of the final delimitation of the boundaries. Nor does it amount to a recognition by General Graziani that the present deployment of French units may be regarded as legitimate from the international aspect.

While the claim that General Balbo might have been in breach of international law during his aerial excursion must be regarded as unfounded, one must in turn wonder whether the French have not committed a true and actual breach in occupying localities such as Tekro (to the south of Koufra) and Inezzan (between Ghat and Toummo), which belong beyond doubt to Libya, and that with the occupation of the points of Ozu, Ur, etc. on the northern slopes of the Tibesti, they have seized possession of a region along which no delimitation has as yet been made and which is claimed by us.

All this in my opinion could be the subject of a simple reply through the newspapers, without any semi-official character. In any event, I leave it to Your Excellency to make up your own mind as to what should be done.

I would add in confidence that in my opinion there can be no doubt that the article was written at the explicit request of the French Ambassador in Rome.

(Signature)

Exhibit LC-M 26

ligne Salal-Arada, se retrouveront donc sur une ligne Koro-Toro-Oum-Chalouba. Ziguey et Iriba sont nettement au-dessous de cette nouvelle ligne rouge.

Cette nouvelle ligne d'interdiction, sur laquelle la force Manta maintiendra désormais une surveillance essentiellement aérienne, s'étend sur environ 1 000 kilomètres avec, par rapport à l'axe précédent Salal-Arada, une profondeur variable de 180 à 200 kilomètres à l'ouest du Tchad et de 80 kilomètres à l'est du pays.

Dès lors que des franchissements de la zone « rouge » seront constatés, la force Manta pourra se considérer comme directement agressée, dit-on au ministère de la Défense, et, depuis les positions qu'elle occupe, elle s'estimera en droit d'interdire les intrusions par tous les moyens dont elle dispose. L'ouverture de feu sans préavis est donc autorisée dans la nouvelle « zone rouge ».

Cette riposte a deux conséquences. D'abord, bien sûr, il va falloir envoyer au Tchad des renforts en hommes et en matériel. Ensuite et surtout, l'armée française se trouve désormais pratiquement en première ligne. Jusqu'à présent, c'était l'armée tchadienne seule qui patrouillait à la limite de ce qu'on appelle les deux Tchad. Désormais, au premier incident, ce seront les bérets verts des légionnaires, rouges des paras et noirs des marsouins qui seront « au contact ».

Le film « instantané » de la situation sur le terrain au lendemain du coup de Ziguey se résume en quatre clichés :

– Manta est renforcée entre le 26 et le 30 janvier : ses effectifs sont portés de 2 850 à 3 310 hommes, 4 Jaguar, 3 Mirage F 1, 1 C 135 F, 3 Puma et 4 Gazelle Hot viennent compléter son dispositif aérien.

– Les Libyens renforcent leur dispositif en « musclant » les éléments terrestres de leurs troupes qui amorcent un mouvement vers le sud, et en accroissant le volume de leur aviation basée dans le sud de la Libye.

– Les Libyo-coalisés accentuent leur menace sur Ito.

– Les FANT contre-attaquent sur Moundu le 30 janvier, prenant ainsi l'initiative des opérations. Le dispositif Manta s'étend jusqu'à Iriba pour être en mesure de

Exhibit LC-M 27

TCHAD

Communiqué du 17 septembre 1984 annonçant l'évacuation totale et concomitante du Tchad par les forces armées françaises et libyennes. — Evolution de la situation depuis cette date. — Application tardive et incomplète de l'accord par la Libye (161)

I. — *Le communiqué du 17 septembre 1984.* — Le 17 septembre 1984 en fin de matinée le ministère français des Relations extérieures publiait le bref communiqué suivant :

« Le ministre français des Relations extérieures s'est rendu à Tripoli à l'invitation de son collègue le Dr Ali Triki, secrétaire du Comité populaire du bureau populaire des liaisons extérieures. Il a été reçu par le colonel Kadhafi, guide de la révolution.

» La Jamahiriya et le gouvernement français ont marqué leur désir de développer leurs relations et leur coopération et de supprimer toutes les entraves à celles-ci.

» La Jamahiriya et la France ont décidé de procéder dans les meilleurs délais à l'évacuation totale et concomitante du Tchad des forces armées françaises et des éléments d'appui libyens au GUNT, ainsi que de la totalité de leurs armements et équipements respectifs.

» L'évacuation commencera le 25 septembre 1984. »

Un communiqué analogue était publié à Tripoli par le gouvernement libyen.

L'accord était intervenu à l'issue d'un voyage de 48 heures du ministre français des Relations extérieures, M. Claude Cheysson, en Libye du 14 au 16 septembre. L'ancien chancelier autrichien, M. Bruno Kreisky, et le Premier ministre grec, M. Andréas Papandréou, tous deux socialistes, avaient joué un rôle intermédiaire entre les deux Etats intéressés. La date de la fin du mouvement de retrait, placé sous le contrôle d'un dispositif de surveillance, avait été fixée mais, de l'aveu de M. Cheysson lui-même, demeurait un secret militaire.

Cet événement appelle deux sortes d'observations, les unes quant à la procédure utilisée, les autres quant au contenu de l'accord intervenu.

A) Ce qu'on a appelé couramment depuis lors l'accord franco-libyen ne résulte pas d'un acte unique — en la circonstance un communiqué commun —, mais de deux communiqués unilatéraux émanés, l'un du gouvernement français, l'autre — dont la teneur n'a jamais été divulguée par la presse — du gouvernement libyen. Le texte du communiqué par celui du seul instrument qui ait été rendu public — ne fait pas état formellement de la conclusion d'un « accord » entre les deux Parties. Il y a déjà là un élément qu'il ne faut pas perdre de vue si l'on veut apprécier à sa valeur l'acte du 17 septembre 1984, probablement constitutif d'un accord politique, mais non d'un accord juridique au sens habituel du mot.

---

(161) Voir les journaux français et surtout *Le Monde* depuis le 17 septembre 1984. Sur l'ensemble du problème du Tchad voir nos chroniques dans cette *Revue*, 1969, pp. 469-471 ; 1972, p. 1187 ; 1973, p. 1213 ; 1976, pp. 275-291 ; 1977, pp. 856-860 ; 1979, p. 1048 ; 1980, pp. 908-909 ; 1981, pp. 586-588 ; 1982, p. 388 et 1984, pp. 288-292.

B) Si l'on passe maintenant du plan formel au plan matériel, on constate que le communiqué du 17 septembre parle simplement de l'évacuation du « Tchad » sans définir géographiquement l'étendue du territoire concerné. Or, d'après l'interprétation donnée à Paris (163), la région du Tibesti — la bande d'Aozou, à l'extrême nord du pays —, occupée par la Libye depuis 1973, mais qui fait partie intégrante du Tchad, n'était pas visée par l'accord. On sait que cette bande de territoire a été cédée par la France à l'Italie (c'est-à-dire à la Libye) par le traité franco-italien du 7 janvier 1935 (accord Laval-Mussolini) mais qui, faute de ratification, est resté caduc. Il y a donc là au départ une concession majeure consentie à la Libye aux dépens du Tchad. On peut d'ailleurs s'étonner que l'accord d'évacuation ait été souscrit par les deux Etats « occupants » sans la moindre participation du gouvernement tchadien, le droit tout court comme la simple courtoisie condamnant cette mise à l'écart du principal intéressé (164).

On peut d'autre part s'étonner que deux Etats tiers aient décidé seuls de l'envoi d'observateurs étrangers sur le territoire d'un Etat indépendant sans même consulter au préalable les dirigeants de cet Etat (165). Ce n'est pas sans raison que certains journaux ont parlé à cette occasion de « réflexe colonial ». La simple courtoisie venait ici conforter l'application du droit pour justifier une telle consultation. Or ni l'une ni l'autre n'ont été pris en considération.

A plusieurs reprises — notamment en novembre 1980 par la bouche du colonel Khadafi et encore le 18 septembre 1984 par celle de M. Ali Triki, ministre libyen des Affaires étrangères — le gouvernement de Tripoli a affirmé que la bande d'Aozou — longue de 1.000 km et large de 100, réputée riche en pétrole et en réserves d'uranium, et d'un grand intérêt stratégique — faisait partie intégrante du territoire de la Libye et que ce n'était pas un sujet possible de discussion avec un autre

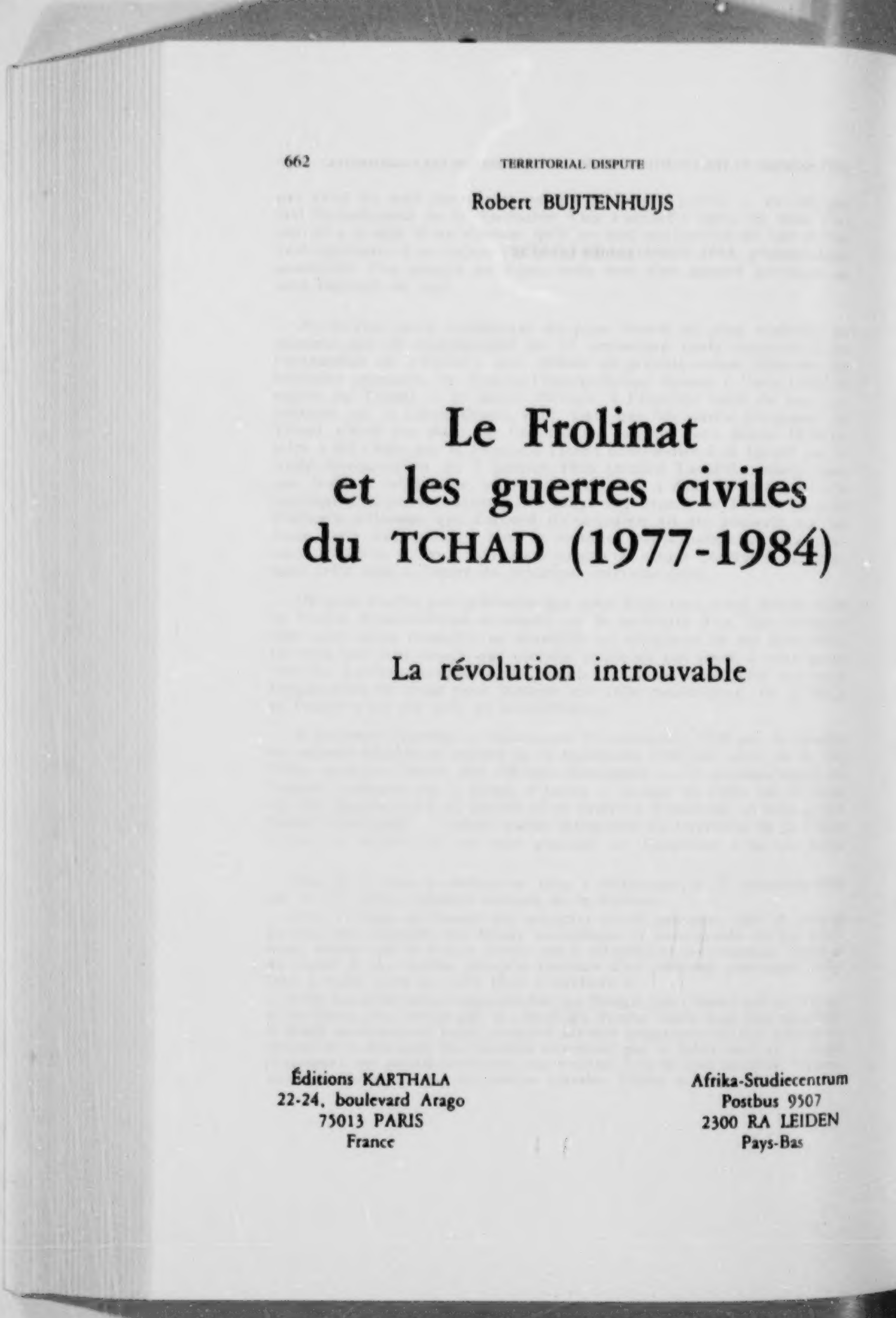
---

(163) En ce sens la déclaration faite à N'Djamena le 17 septembre 1984 par M. Ch. Hernu, ministre français de la Défense.

(164) A l'issue du Conseil des ministres du 19 septembre 1984 M. Roland Dumas, alors ministre des Affaire européennes et porte-parole du gouvernement, déclara que la France n'avait pas à informer le gouvernement tchadien du retrait de ses troupes, puisqu'il s'agissait d'un problème strictement militaire à régler entre les deux Etats « occupants ».

(165) Les observateurs appartenaient au Sénégal (pays choisi par la France) et au Bénin (pays choisi par la Libye). Ce dernier choix était peu opportun, le Bénin (ex-Dahomey) ayant constitué pendant longtemps l'un des principaux centres de recrutement des éléments incorporés par la Libye dans la « Légion islamique » qui prêtait main-forte aux rebelles dans le nord tchadien. L'opposition du Tchad à cette désignation entraîna l'échec de l'institution.

Exhibit LC-M 28



Robert BUIJTENHUIJS

Le Frolinat et les guerres civiles du TCHAD (1977-1984)

La révolution introuvable

Éditions KARTHALA
22-24, boulevard Arago
75013 PARIS
France

Afrika-Studiecentrum
Postbus 9507
2300 RA LEIDEN
Pays-Bas

la position française semble s'éloigner subrepticement de celle défendue par Hissène Habré. Fin août 1983, Claude Cheysson exprima encore une opinion « classique » en déclarant que la bande d'Aozou était « territoire tchadien » (*Le Journal de Genève*, 24 août 1983), mais, quelques jours plus tard, Mitterrand répond évasivement lorsqu'on lui demande si la défense de l'indépendance, de la souveraineté et de l'intégrité du Tchad à laquelle la France souhaite contribuer s'applique aussi à la bande d'Aozou :

> « Mes prédécesseurs considéraient ce contentieux (...) comme une affaire bilatérale entre Tripoli et N'Djamena. Je pense comme eux. M. Hissène Habré avait également raison lorsque, exprimant le souhait de discuter avec M. Kadhafi, il se déclarait prêt à remettre à plus tard l'examen de ce différend » (*Le Monde*, 26 août 1983).

C'est une réponse qui se prête à plusieurs interprétations. Lors de son intervention à TF1, le 16 décembre 1984, M. Mitterrand reprend et développe le même argument. Il dénonce, en effet, « la présence libyenne dans le nord » du Tchad et ajoute que « la France n'acceptera jamais, politiquement et juridiquement, l'amputation d'un pays d'Afrique ». Au sujet d'Aozou, par contre, il ne prend aucun engagement : « Je ne suis pas le gendarme de l'Afrique. Il appartient d'abord au gouvernement du Tchad, ensuite à l'Organisation africaine, de (la) reconquérir si elle le désire » (AFP, 16-17 décembre 1984). C'est à Charles Hernu que M. Mitterrand laisse le soin d'effectuer le dernier virage dans la politique française sur le problème d'Aozou. Le 27 mars 1985, celui-ci déclare en effet : « La bande d'Aozou est hors du Tchad. Cela, tout le monde est d'accord. Même le président Habré le reconnaît. C'est une affaire qui remonte à 1934 » (*Jeune Afrique*, n° 1 266, 10 avril 1985).

On ne peut interpréter cette déclaration autrement que comme une reconnaissance tardive de l'accord Mussolini-Laval. Or, tout cela ne concerne que la seule bande d'Aozou. Cependant, les glissades de la politique tchadienne de M. Mitterrand semblent aller plus loin et mettre en cause tout le Tchad au-dessus du 16ᵉ parallèle. Deux choses frappent en effet dans les déclarations françaises de la fin 1984. Il y a d'une part l'affirmation, répétée à plusieurs reprises, aussi bien par Mitterrand que par Cheysson, que les troupes libyennes restées au Tchad ne disposent que d'un armement défensif. Ces propos, tenus par M. Cheysson à l'Assemblée nationale, provoquent un rire général sur les bancs de l'opposition (*Le Figaro*, 6 décembre 1984). Hilarité bien compréhensible, car les Libyens n'avaient pas à être dans

Exhibit LC-M 29

YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

1974

Volume I

Summary records
of the twenty-sixth session
6 May-26 July 1974

UNITED NATIONS

mainly on the basis of the agreement of the country concerned.

22. He was equally unconvinced by the argument derived from article III, paragraph 3, of the Charter of the Organization of African Unity.[9] That provision admittedly upheld respect for the sovereignty and territorial integrity of States, which was also upheld by the Charter of the United Nations. There were, however, many African States, such as Somalia, which were not satisfied with boundary and territorial arrangements that were a legacy from the colonial era. Most modern writers stressed the fact that colonial frontiers had been shaped more by strategic or economic needs than by the sentiments and aspirations of the populations concerned. It was for that reason that many Asian and African boundaries failed to follow clear ethnic or cultural divisions.

23. That being said, he wished to comment on the Treaty of Kabul,[10] mentioned in paragraph (14) of the commentary. That Treaty had not, in fact, been a boundary treaty, but a treaty of friendship concluded in 1921 after the third Anglo-Afghan war. It had been terminated by giving one year's notice under its article 14. There was, moreover, nothing in that Treaty which pointed to permanency of any of its provisions. The United Kingdom had given its own one-sided interpretation of the matter, which conflicted not only with article 14 of the Treaty itself, but even with the provisions of the Indian Independence Act and with various written and unwritten promises made to Afghanistan before the sub-continent had become independent. The frontier to which the United Kingdom note, quoted in paragraph (14) of the commentary, referred, had not been a demarcation line, but a political boundary drawn for the purpose of protecting British India from possible invasion from the North. Both the North-West Frontier Province, with its population of three million at the time, and the Free Tribal Area had been administered separately from India.

24. There were two other documents which should be mentioned in paragraph (14) of the commentary in order to make it more balanced. The first was a letter of 1921 from Sir Henry Dobbs, the head of the British Mission, to the Afghan Minister for Foreign Affairs, which had been attached to the Treaty of Kabul; that letter recognized the interest of Afghanistan in the frontiers of India beyond the Durand Line and the fact that the members of the frontier tribes were not citizens of India. The second was the United Kingdom declaration of 3 June 1947, which dealt with the special case of the North West Frontier Province and the Free Tribal area. Both those documents had been included in the Secretariat publication *Materials on Succession of States*.[11]

25. He disagreed with the Special Rapporteur's conclusion that Governments supported articles 29 and 30: out of over 130 Members of the United Nations, only 23 were mentioned in paragraph 425 of his report (A/CN.4/278/Add.6) as having expressed such support in writing or orally, and in many cases that support was stated to be "by implication". In fact, articles 29 and 30 were favoured only by certain big Powers and a small number of countries which benefited from the boundaries inherited from the colonial era. For political reasons, a great many countries had not expressed their views at all: one example was Japan, which had not submitted any comments, but which was actively negotiating on the subject of territorial treaty provisions. There was also the significant silence of the People's Republic of China.

26. In the circumstances, it was most unrealistic to imagine that burning political issues could be disposed of by treating the provisions of articles 29 and 30 as though they constituted settled rules of international law. The only possible course was to seek, by peaceful and direct negotiation, settlement of those territorial disputes which endangered the peace of the world.

27. He had already commented on the limited reliance which could be placed on the few judicial precedents mentioned in the commentary. He would only add that, as far as the International Court of Justice was concerned, its present composition did not inspire confidence in the majority of the countries of Asia and Africa.

28. In conclusion, he urged that articles 29 and 30 should be deleted from the draft.

29. Mr. TAMMES said that the Special Rapporteur had given convincing answers to the more fundamental objections raised to articles 29 and 30. His report demonstrated that the many inequities of history could not be corrected simply by means of a convention on succession in respect of treaties; but at the same time it stressed that the draft articles would leave untouched any other grounds for claiming the revision or setting aside of boundary settlements (A/CN.4/278/Add.6, para. 440).

30. His own comments would be largely concerned with drafting, although not devoid of substantive implications. It seemed to him that the final phrase of article 29, "régime of a boundary", needed to be clarified, especially as the commentary, paragraph (18) of which explained the matter, would not remain when the draft articles became a convention. That phrase appeared to have been used mainly in order to determine that treaty provisions for the completion of a boundary settlement, by demarcation or otherwise, were inherited by the successor State with the boundary situation already executed. That extension of devolution, however, was one of the most controversial issues that arose with respect to boundary régimes. It had been an issue between the parties in the *Case concerning the Temple of Preah Vihear*,[12] but the International Court of Justice had not decided whether such treaty provisions were transmissible upon succession. The same controversial issue had arisen in connexion with the Treaty of Kabul and in boundary disputes between African States.

---

[9] United Nations, *Treaty Series*, vol. 479, p. 74.

[10] League of Nations, *Treaty Series*, vol. XIV, p. 67.

[11] ST/LEG/SER.B/14 (United Nations publication, Sales No. E/F.68.V.5), pp. 5 and 6.

[12] *I.C.J. Reports 1962*, p. 6.

would be psychologically more effective if it was included in the text of the draft.

66. The Commission could not, of course, rectify boundary situations which, in the opinion of some, were not fair. That was certainly not the purpose of the draft articles. The Commission was not at present engaged in writing frontier law, but only succession law. It could not go beyond the formulation of provisions on succession of States.

67. That being said, he wished to deal with some drafting points. The first related to the phrase "régime of a boundary" in sub-paragraph (*b*) of article 29. That formula had been criticized as being too vague, but it would be very difficult to make it any more precise without going into excessive detail. In fact, the formula was in fairly common use and was usually taken to mean a set of attributes which accompanied a boundary. One example was that of means established for the delimitation and determination of the actual boundary line; a set of agreed technical rules for the purpose of determining the exact site of the boundary would constitute part of the régime of the boundary.

68. The United States Government, in its comments, had suggested the elimination from paragraph 1 of article 30 of the requirement that rights and obligations had to attach to a particular territory in the State concerned (A/CN.4/275). As he saw it, the purpose of that suggestion was to reduce possible argument on the question whether the rights related to a particular territory or to the State as a whole. If one took the example of a land-locked State which had certain rights of transit or the right to use a seaport in another State, those rights clearly benefited the entire land-locked State. Cases of that kind should be covered by the draft articles.

69. He accordingly urged that the Drafting Committee should give careful consideration to that suggestion which, if accepted, would make the application of article 30 clearer, simpler and less productive of disputes.

The meeting rose at 1.05 p.m.

1280th MEETING

Wednesday, 3 July 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of treaties

(A/CN.4/275 and Add.1 and 2; A/CN.4/278 and Add.1-6; A/CN.4/L.205; A/8710/Rev.1)

[Item 4 of the agenda]

(*continued*)

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 29 (Boundary régimes) and

ARTICLE 30 (Other territorial régimes) (*continued*)

1. The **CHAIRMAN** invited the Commission to continue consideration of articles 29 and 30.

2. Mr. **EL-ERIAN** said that the Commission had decided in 1972 to include articles 29 and 30 in the draft in order to cover certain categories of treaties, or rather certain situations which had their origin in treaties of a "territorial" character, known also as "dispositive" or "localized" treaties. The Commission had taken that decision in full awareness of the complexity of the undertaking; it had recognized in paragraph (1) of the commentary (A/8710/Rev.1, chapter II, section C) that the question of territorial treaties was "at once important, complex and controversial".

3. It had been asked whether the subject-matter of articles 29 and 30 really belonged to succession of States in respect of treaties or to the other part of the topic of State succession, for which Mr. Bedjaoui was Special Rapporteur. That question had been raised in the Sixth Committee by the Egyptian delegation, whose comments were summarized in the Special Rapporteur's report (A/CN.4/278/Add.6, para. 417). During the present discussion, the majority of members had seemed to consider it desirable to include the two articles in the draft. If the Commission decided to retain them, it would be necessary to find a formulation that would allay the misgivings and prevent the misinterpretations to which the present text of the articles had given rise.

4. For those reasons, it was essential to make it abundantly clear what the articles were intended to cover, what their provisions actually meant and, particularly, what they did not mean. In the latter connexion, he drew attention to the statement in the Special Rapporteur's report that "the draft articles should deal only with matters relating to the effects of a succession of States and should not attempt to reiterate rules such as those relating to the validity of treaties". The Special Rapporteur had then gone on to stress the need to make it "absolutely clear that article 30 does not prejudice any grounds that there may be fore invalidating or terminating a treaty" (A/CN.4/278/Add.6, para. 453). There was general agreement that the Commission did not intend articles 29 and 30 to prejudice the question of the validity of the treaties concerned. Article 6 of the draft was particularly relevant to that matter, since it stipulated that the present articles applied only to "the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations", and the provisions of articles 29 and 30 were obviously subordinated to those of article 6.

5. He accordingly supported the suggestion made by Mr. Elias and Mr. Kearney that the position should be made absolutely clear in that respect,[1] primarily for

---

[1] See previous meeting, paras. 44 and 65.

Exhibit LC-M 30

YEARBOOK
OF THE
INTERNATIONAL
LAW COMMISSION
1972

Volume II

Documents of the twenty-fourth session
including the report of the Commission
to the General Assembly

UNITED NATIONS

(11) The basic position of the State which continues in existence is clear enough since it necessarily remains in principle a party to the treaties which it has concluded. The main problem therefore is to formulate the criteria by which to determine the effect upon its participation in these treaties of the separation of part of its territory. The territorial scope of a particular treaty, its object and purpose and the change in the situation resulting from the separation are elements which have to be taken into account. Accordingly *paragraph 1* lays down that the predecessor State remains bound in relation to its remaining territory by the treaties binding upon that State at the date of the separation. The necessary safeguarding provisions to take account of the elements just mentioned are then formulated in sub-paragraphs *1* (*a*) and (*b*) as exceptions to the general rule. Under these exceptions the predecessor State will not continue to be bound if: (*a*) it is otherwise agreed (*sub-paragraph* (a)); (*b*) the treaty was intended to relate only to the territory which has separated or the effect of the separation is radically to transform the obligations and rights provided for in the treaty (*sub-paragraph* (b)). The position of the predecessor State in respect of pre-separation treaties remains as before the separation, subject only to these exceptions.

(12) In the light of the recorded practice, *paragraph 2* of article 28 states that the new State emerging from the separation is to be considered as being in the same position as a newly independent State in relation to any treaty which at the date of separation was in force in respect of the territory now under its sovereignty. In other words, the basic rule governing the position of the separated State will be the so-called clean slate rule formulated in article 11 and its participation in treaties of the original State at the date of the separation will be regulated by articles 12 to 21 of the present draft articles. Some members of the Commission were inclined to question whether *paragraph 2* should apply automatically and in all cases to the separated State and reserved their position on this point until after the Commission would receive the comments of Governments.

PART V

BOUNDARY REGIMES OR OTHER TERRITORIAL REGIMES ESTABLISHED BY A TREATY

Article 29. Boundary régimes

A succession of States shall not as such affect:

(*a*) A boundary established by a treaty; or

(*b*) Obligations and rights established by a treaty and relating to the régime of a boundary.

Article 30. Other territorial régimes

1. A succession of States shall not as such affect:

(*a*) Obligations relating to the use of a particular territory, or to restrictions upon its use, established by a treaty specifically for the benefit of a particular territory of a foreign State and considered as attaching to the territories in question;

(*b*) Rights established by a treaty specifically for the benefit of a particular territory and relating to the use, or to restrictions upon the use of a particular territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States shall not as such affect:

(*a*) Obligations relating to the use of a particular territory, or to restrictions upon its use, established by a treaty specifically for the benefit of a group of States or of all States and considered as attaching to that territory;

(*b*) Rights established by a treaty specifically for the benefit of a group of States or of all States and relating to the use of a particular territory, or to restrictions upon its use, and considered as attaching to that territory.

Commentary

(1) Both in the writings of jurists and in State practice frequent reference is made to certain categories of treaties, variously described as of a "territorial" "dispositive", "real" or "localized" character, as binding upon the territory affected notwithstanding any succession of States. The question of what will for convenience be called in this commentary territorial treaties is at once important, complex and controversial. In order to underline its importance the Commission need only mention that it touches such major matters as international boundaries, rights of transit on international waterways or over another State, the use of international rivers, demilitarization or neutralization of particular localities, etc.

(2) The weight of opinion amongst modern writers supports the traditional doctrine that treaties of a territorial character constitute a special category and are not affected by a succession of States. At the same time, some jurists tend to take the position, especially in regard to boundaries, that it is not the treaties themselves which constitute the special category so much as the situations resulting from their implementation. In other words, they hold that in the present context it is not so much a question of succession in respect of the treaty itself as of the boundary or other territorial régime established by the treaty. In general, however, the diversity of the opinions of writers makes it difficult to find in them clear guidance as to what extent and upon what precise basis international law recognizes that treaties of a territorial character constitute a special category for the purposes of the law applicable to succession of States.

(3) The proceedings of international tribunals throw some light on the question of territorial treaties. In its second Order in the case concerning the Free Zones of Upper Savoy and the District of Gex the Permanent Court of International Justice made a pronouncement which is perhaps the most weighty endorsement of the existence of a rule requiring a successor State to respect a territorial treaty affecting the territory to which a succession of States relates. The Treaty of Turin of 1816, in fixing the frontier between Switzerland and Sardinia, imposed restrictions on the levying of customs duties in

interest in regard to boundary treaties, although the question of succession was not dealt with by the International Court of Justice in its judgment. The boundary between Thailand and Cambodia had been fixed in 1904 by a Treaty concluded between Thailand (Siam) and France as the then protecting Power of Cambodia. The case concerned the effects of an alleged error in the application of the Treaty by the Mixed Franco-Siamese Commission which demarcated the boundary. Cambodia had in the meanwhile become independent and was therefore in the position of a newly independent State in relation to the boundary Treaty. Neither Thailand nor Cambodia disputed the continuance in force of the 1904 Treaty after Cambodia's attainment of independence, and the Court decided the case on the basis of a map resulting from the demarcation and of Thailand's acquiescence in the boundary depicted on that map. The Court was not therefore called upon to address itself to the question of Cambodia's succession to the boundary Treaty. On the other hand, it is to be observed that the Court never seems to have doubted that the boundary settlement established by the 1904 Treaty and the demarcation, if not vitiated by error, would be binding as between Thailand and Cambodia.

(7) More directly to the purpose is the position taken by the parties on the question of succession in their pleadings on the preliminary objections filed by Thailand. Concerned to deny Cambodia's succession to the rights of France under the pacific settlement provisions of a Franco-Siamese Treaty of 1937, Thailand argued as follows:

> Under the customary international law of state succession, if Cambodia is successor to France in regard to the tracing of frontiers, she is equally bound by treaties of a local nature which determine the methods of marking these frontiers on the spot. However, the general rules of customary international law regarding state succession do not provide that, in case of succession by separation of a part of a State's territory, as in the case of Cambodia's separation from France, the new State succeeds to political provisions in treaties of the former State. [...] The question whether Thailand is bound to Cambodia by peaceful settlement provisions in a treaty which Thailand concluded with France is very different from such problems as those of the obligations of a successor State to assume certain burdens which can be identified as connected with the territory which the successor acquires after attaining its independence. *It is equally different from the question of the applicability of the provisions of the treaty of 1904 for the identification and demarcation on the spot of the boundary which was fixed along the watershed.*" [illegible]

Cambodia, although it primarily relied on the thesis of France's "representation" of Cambodia during the period of protection, did not dissent from Thailand's propositions regarding the succession of a new State in respect of territorial treaties. On the contrary, she argued that the peaceful settlement provisions of the 1937 Treaty were directly linked to the boundary settlement and continued:

> Thailand recognizes that Cambodia is the successor to France in respect of treaties for the definition and delimitation of frontiers. It cannot arbitrarily exclude from the operation of such treaties any provisions which they contain relating to the compulsory jurisdiction rule *in so far as this rule is ancillary to the definition and delimitation of frontiers.*" [illegible]

Thus both parties seem to have assumed that, in the case of a newly independent State, there would be a succession not only in respect of a boundary settlement but also of treaty provisions ancillary to such settlement. Thailand considered that succession would be limited to provisions forming part of the boundary settlement itself, and Cambodia that it would extend to provisions in a subsequent treaty directly linked to it.

(8) The case concerning right of passage over Indian Territory [illegible] is also of a certain interest, though it did not involve any pronouncement by the Court on succession in respect of treaty obligations. True, it was under a Treaty of 1779 concluded with the Marathas that Portugal first obtained a foothold in the two enclaves which gave rise to the question of a right of passage in that case. But the majority of the Court specifically held that it was not in virtue of this Treaty that Portugal was enjoying certain rights of passage for civilian personnel on the eve of India's attainment of independence; it was in virtue rather of a local custom that had afterwards become established as between Great Britain and Portugal. The right of passage derived from the consent of each State, but it was a customary right, not a treaty right, with which the Court considered itself to be confronted. The Court found that India had succeeded to the legal situation created by that bilateral custom "unaffected by the change of *régime* in respect of the intervening territory which occurred when India became independent". [illegible]

(9) State practice, and more especially modern State practice, has now to be examined; and it is proposed to deal with it first in connexion with boundary treaties and then in connexion with other forms of territorial treaties.

(10) *Boundary treaties.* Mention must first be made of article 62, paragraph 2 *a*, of the Vienna Convention on the Law of Treaties which provides that a fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty "if the treaty establishes a boundary". This provision was proposed by the Commission as a result of its study of the general law of treaties. After pointing out that this exception to the fundamental change of circumstances rule appeared to be recognized by most jurists, the Commission commented:

> *Paragraph 2* excepts from the operation of the article two cases. The first concerns treaties establishing a boundary, a case which both States concerned in the *Free Zones* case appear to have recognized as being outside the rule, as do most jurists. Some members of the Commission suggested that the total exclusion of these treaties from the rule might go too far, and might be inconsistent with the principle of self-determination recognized in the Charter. The Commission, however, concluded that treaties establishing a boundary should be recognized to be an exception to the rule, because otherwise the rule, instead of being an instrument of peaceful change, might become a source of dangerous frictions. It also took the view that "self-determination", as envisaged in the Charter was an independent principle and that it might lead to confusion if, in the context of the law of treaties, if were presented as an application of the rule contained in the present article. By excepting treaties establishing a boundary from its scope the

---

[illegible] *I.C. Pleadings, Temple of Preah Vihear*, vol. I, pp. 145-146.

[illegible] *Ibid.*, p. 165 [translation by the Secretariat].

[illegible] *I.C.J. Reports 1960*, p. 6.

[illegible] *Ibid.*, p. 40.

Exhibit LC-M 31

DEVELOPMENTS IN THE LAW OF TREATIES 1945–1986

SHABTAI ROSENNE
Arthur Goodhart Professor in Legal Science
University of Cambridge, 1985–1986
Visiting Fellow, Magdalene College, Cambridge

The right of the University of Cambridge to print and sell all manner of books was granted by Henry VIII in 1534. The University has printed and published continuously since 1584.

CAMBRIDGE UNIVERSITY PRESS
Cambridge
New York New Rochelle Melbourne Sydney

> This concept, which is directly inspired by the notion of contract, is of undisputed value as a principle. However, as regards the Genocide Convention, it is proper to refer to a variety of circumstances which would lead to a more flexible application of this principle. Among these circumstances may be noted the clearly universal character of the United Nations under whose auspices the Convention was concluded, and the very wide degree of participation envisaged by . . . the Convention.[59]

As for the Commission, most striking was its decision in 1963 to turn around what became Part V of the Vienna Convention on the invalidity, termination and suspension of the operation of treaties. Instead of approaching the issues as concerning the validity and duration of treaties, regarded by the earlier special rapporteurs who had dealt with this aspect as essential elements arising out of theories of contractual jurisprudence but which had been causing great difficulties to the Commission, the Commission changed its approach. It studied the issues in a less philosophical way by presuming the validity of a treaty or its continuation in force in accordance with its terms or indefinitely if it were silent on the matter, and from that point of departure by expounding the grounds which may be invoked to establish its invalidity or termination. This is explained in paragraph 11 of the 1963 report. Had that not been done, it is doubtful if the Vienna Convention would or could ever have been completed to such general satisfaction.

Both the binding instruments in their way distinguished from traditional contractual jurisprudence, and non-binding instruments, are produced essentially in the same way, that is through negotiation. Negotiation is a political operation, at whatever level it is conducted. As such, it is hardly a matter for legal regulation in itself beyond the generality, common to all relationships, that the negotiation must be conducted in good faith and without deliberate deception; and acceptance of an invitation to enter into negotiations on a given topic, whether bilateral negotiations or a multilateral conference, implies a willingness in principle to attempt to reach agreement, even if the basic text proposed for the agreement is not entirely acceptable. But unlike private law relationships, where

---

[59] ICJ Reports 1951, 15 at 21. And note article 5 of the 1969 Vienna Convention regarding treaties adopted within an international organization. Although repeated verbatim in the 1986 Convention, its scope may have been broadened by the explanation of the term 'rules of the organization' contained in article 2, paragraph 1(j) of the 1986 Convention (see p. 191 below).

> situation if we say . . . that legal tribunals cannot be concerned with any shortcomings – from the point of view of morals, politics or economics – of the law as declared or formulated by them?[2]

The codified law of treaties with its repeated references to 'good faith', indicates that a similar approach is legitimately adopted by law-formulating organs such as the International Law Commission and conferences of plenipotentiaries, and consequently by States in the process of law-formulation, that is negotiation. In the long run, the implications of this need not be limited to the codified law of treaties.

2 GOOD FAITH IN THE VIENNA CONVENTIONS

As mentioned, there are five references to good faith in each of the Vienna Conventions on the Law of Treaties. In the third paragraph of the preamble as proposed by the Drafting Committee of 1969, the States Parties noted 'that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognised'. In article 26, the *pacta sunt servanda* rule is enunciated pithily: 'Every treaty in force is binding on the parties to it and must be performed by them in good faith.' Article 31, the general rule on interpretation, commences with the words: 'A treaty shall be interpreted in good faith . . .' It will be noted that this provision, at first glance a categorical imperative, is in an aphoristic form, addressed to the world at large, and this explains its wide application today in and by a variety of international courts and tribunals and other forums. Article 46, on provisions of internal law regarding competence to conclude treaties and the invocation of a violation of that law as a ground for invalidating a State's consent to be bound by a treaty, provides that a violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and good faith. Article 69, on the consequences of the invalidity of a treaty, provides in paragraph 2(b) that if acts have been performed in reliance on the void treaty, 'acts performed in

---

[2] 'Some Observations on the Prohibition of "*Non Liquet*" and the Completeness of the Law' in H. Lauterpacht, 2 *International Law* (E. Lauterpacht, ed.) 213, 227 (1975), commenting on the statement of the International Court of Justice, after it had declared the law in a given set of circumstances, that it was not for the Court 'to pronounce on the political or moral duties which these considerations may involve'. *South West Africa* (status) case, [1950] ICJ Reports 128, 140. Lauterpacht's essay originally appeared in *Symbolae Verzijl* (ed. van Asbeck *et al.*) 196 (1958).

Tribunal examined very closely the actual conduct of the parties in order to establish their 'good faith' or 'bad faith' in various phases of the dispute.[55]

By and large, in so far as concerns the issue of good faith, whether in the interpretation of these agreements or in the performance of their obligations, these arbitrations would appear to follow closely the general patterns developed by the international courts and tribunals which have considered similar matters in disputes between States.

7 THE PHASED IMPACT OF GOOD FAITH

In the international law of treaties, both its codification and its judicial and political application demonstrate that while good faith pervades the whole of this branch of the law, it is particularly prominent in three separate phases of the existence of a treaty: the negotiating phase; the phase of its interpretation and application (much the same thing in practice); and the phase that is the consequence of its performance (including non-performance or misperformance).[56] In this triptych, it is possible that the function of good faith may not be quite the same in each phase. But always, good faith has reference to actual conduct, and not to a state of mind, or psychological or other factors leading to conduct. Furthermore, it is not to be taken as referring only to negative conduct, but also it contains positive elements. But whose conduct?

In the phase of negotiation, it seems that two separate aspects are relevant: the personal conduct of those handling the negotiations, and the conduct attributable to the State or the international organization which gave the negotiators their instructions or endorsed their actions subsequently under a provision such as article 8 of the Vienna Conventions. Nevertheless, some aspects are common in both respects. Thus, uncandidness, whether by the individual representatives or by absent authorities of those amorphous entities, the State or the international intergovernmental organization – apart from its being bad diplomacy and a violation of the standards of diplomatic behaviour – might not in itself invalidate the negotiation unless there was an element of fraud or corruption or the deliberate inducement of an error (envisaged in articles 49 and 50 of the Vienna Conventions). But it could well be taken as an indication that the negotiations were not being conducted in good faith. That would have a forward thrust into the later phases of the existence of the treaty, especially its performance and the international responsibility for its breach, whether or not material breach in the sense of article 60 of the Vienna Conventions, or in the more general sense envisaged at present in article 17 of Part 1, *The Origin of International Responsibility*, of the draft articles on State responsibility adopted by the International Law Commission in 1976.[57] In an indirect way the Vienna Conventions themselves may supply pointers to conduct which could be taken as indicating the absence of good faith in the negotiating phase quite apart from fraud and coercion already mentioned. Examples could comprise misleading information, or concealing information, regarding the relevant rules of the internal law (article 46 of the Vienna Conventions), coercion of a representative (article 51), deliberately creating a lack of concordance of plurilingual versions of a treaty (probably to be embraced within the general concept of error), and others are conceivable. These could include the general conduct of a State or organization and its representatives capable of generating the type of legal consequences envisaged in article 45 of the Vienna Conventions (the so-called 'estoppel'). Indeed, it is no wonder that the articles previously mentioned here, articles 49, 50 and 51, are included amongst those to which article 69, paragraph 2 (with its reference to performance in good faith, see p. 146 above) does not apply. Good faith in the negotiating phase thus has a forward reach straight into the consequences of the situation where the invalidity of the treaty is invoked and established.

---

[55] *Government of the State of Kuwait* v. *The American Independent Oil Company (Aminoil)*, award of 24 March 1982. The Tribunal was composed of Reuter, Sultan and Sir G. Fitzmaurice. And see para. 14 of Sir Gerald's separate opinion. 21 ILM 976, 1048 (1982); 66 ILR 519, 620.

[56] Cf. the following statement: 'The law of treaties is closely bound with the principle of good faith, if indeed not based on it; for the principle governs treaties from the time of their formation to the time of their extinction.' Bin Cheng, *General Principles of Law as applied by International Courts and Tribunals* 105 (1953).

Good faith in interpretation likewise relates to interpretation *in concreto* and by whomsoever made (including interpretation by a court or tribunal), to interpretation taken together with application of a treaty as a necessary first step to its performance. It does not relate to 'abstract' interpretation not directly connected with the

---

[57] See p. 46 above.

Exhibit LC-M 32

PUBLICATION DE LA REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC
NOUVELLE SÉRIE — N° 28

Elisabeth ZOLLER
DOCTEUR EN DROIT

LA BONNE FOI
EN
DROIT INTERNATIONAL PUBLIC

PRÉFACE DE Mme Suzanne BASTID
MEMBRE DE L'INSTITUT

Ouvrage honoré d'une subvention
du Secrétariat d'Etat aux Universités
et couronné par l'Université
de Paris II

ÉDITIONS A. PEDONE
13, Rue Soufflot, 13
PARIS

Il n'existe pas en droit positif de texte qui prévoit comme condition de validité de la formation des traités internationaux la bonne foi des Etats. La Convention de Vienne de 1969 se borne à sanctionner les atteintes portées au principe mais ne le définit pas. Il faut en conclure qu'en matière de conclusion des traités, la bonne foi ne peut se définir que par ce qu'elle n'est pas, c'est-à-dire par son contraire.

Obligation de comportement, la bonne foi revêt ici un contenu indéfini et incertain. Elle oblige, en effet, moins à faire qu'à ne pas faire. On tentera d'en préciser le contenu en étudiant, d'une part, la bonne foi au cours des négociations et, d'autre part, la bonne foi entre la signature et l'entrée en vigueur du traité.

§ 1. - La bonne foi au cours des négociations

39. — Les négociations préliminaires à un accord international sont souvent longues et difficiles. La liberté contractuelle étant la règle, les Etats sont libres de conclure ou de ne pas conclure. Respectueux du principe de l'autonomie de la volonté, le droit international n'impose pas aux Etats parties à une négociation l'obligation de s'entendre. L'obligation juridique ne naîtra que du consentement réciproque des parties.

Les pourparlers peuvent donc être difficiles et les discussions serrées. Chaque Etat formule des offres, des propositions que le cocontractant adverse est libre d'accepter ou de refuser.

Si le droit international ne fait jamais obligation aux Etats parties à une négociation de parvenir à la conclusion d'un accord, du moins entend-il que les négociations se déroulent dans une atmosphère de confiance réciproque et, à cette fin, sanctionne-t-il toute forme de mauvaise foi. La bonne foi qui doit ainsi présider à la formation de l'accord international, d'une part négativement, condamne les manœuvres dolosives (A) et, d'autre part positivement, requiert une attitude raisonnable des parties dans l'hypothèse d'un *pactum de negociando* (B).

A) La prohibition des conduites dolosives

40. — Les négociations internationales doivent se dérouler dans un climat de loyauté, de sincérité sans qu'y apparaisse l'in-

dol est plus facile à rapporter que celle de l'erreur (18). La réalité apparaît différente, car si le dol crée bien une erreur en la personne de l'Etat qui en est victime, il s'agit d'une erreur provoquée, intentionnelle. Dès lors, il ne s'agit pas seulement pour l'Etat victime de faire la preuve qu'il a été trompé, mais encore il lui faut prouver qu'il a été trompé intentionnellement, à dessein ; en d'autres termes, qu'il a été victime d'une intention dolosive, d'une intention malveillante. Le simple fait d'arguer de ce qu'au cours d'une négociation internationale, un Etat a fait usage, par exemple, de cartes falsifiées ne suffit pas à établir *ipso facto* la mauvaise foi de celui-ci. L'Etat ainsi mis en cause peut très bien avoir utilisé ces cartes en toute bonne foi, c'est-à-dire dans l'ignorance totale des vices dont elles étaient entachees. Or, ce n'est pas à lui de faire la preuve de sa bonne foi, puisque celle-ci est toujours présumée, c'est à son cocontractant qu'il incombe d'établir sa mauvaise foi, ce qu'il hésitera toujours plus ou moins à faire (19). On comprend, dans ces conditions, que

> « la partie victime d'une manœuvre dolosive préférera se cantonner dans le terrain objectif de l'erreur substantielle. Les notes diplomatiques ou plaidoiries sauront utiliser à demi-mot les circonstances de l'affaire pour renforcer une argumentation qui laisse intact l'honneur de l'adversaire » (20).

45. — L'intention de tromper et d'induire en erreur n'est pas toujours aussi évidente qu'il ne paraît. Cependant, elle est indispensable pour constituer le dol puisqu'elle en est un des éléments constitutifs. Mais les Etats refusent souvent de l'admettre. C'est ainsi qu'en ce qui concerne le Traité d'Uccialli du 2 mai 1889 entre l'Ethiopie et l'Italie, certains représentants d'Etats, lors de la Conférence de Vienne sur le droit des traités, avaient cité cet accord comme exemple d'un traité dont la conclusion avait été

(18) André Oraison écrit notamment : « La preuve de l'erreur est délicate dans la mesure où la victime doit mettre en évidence une donnée essentiellement psychologique. La preuve du dol est, au contraire, plus facile à rapporter car elle peut s'extérioriser davantage qu'une simple attitude psychologique », « Le dol... », *op. cit.*, p. 624.

(19) Voir, par exemple, l'affaire du *Temple de Préah Vihéar* où, à aucun moment, le Royaume de Thaïlande n'a songé à invoquer la théorie du dol, Affaire du *Temple de Préah Vihéar*, Arrêt au fond du 15 juin 1962, C.I.J., *Recueil* 1962. Sir Gerald Fitzmaurice précise dans son opinion individuelle : « Du côté siamois, on faisait entièrement confiance aux commissions techniques et à la bonne foi des officiers topographes français chargés d'établir les cartes. On ne peut douter, non plus, que ces derniers aient agi en entière bonne foi, qu'ils ont fait usage de toute leur connaissance technique et qu'ils étaient persuadés que la ligne de partage des eaux dans la région de Préah Vihéar correspondait à la frontière indiquée sur la carte de l'Annexe I », *ibid.*, pp. 58-59.

(20) Jean-Pierre Cot, « La bonne foi et la conclusion des traités », *op. cit.*, p. 143.

Exhibit LC-M 33

YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

1966

Volume II

Documents of the second part
of the seventeenth session
and of the eighteenth session
including the reports of the Commission
to the General Assembly

UNITED NATIONS

scope in international law. The Commission sought to find a non-technical expression of as nearly equivalent meaning as possible: fraudulent conduct, *conduite frauduleuse* and *conducta fraudulenta.* This expression is designed to include any false statements, misrepresentations or other deceitful proceedings by which a State is induced to give a consent to a treaty which it would not otherwise have given.

(4) The effect of fraud, the Commission considers, is not to render the treaty *ipso facto* void but to entitle the injured party, if it wishes, to invoke the fraud as invalidating its consent; the article accordingly so provides.

Article 47.[illegible] Corruption of a representative of the State

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Commentary

(1) The draft articles on the invalidity of treaties provisionally adopted by the Commission in 1963 and transmitted to Governments for their observations did not contain any provision dealing specifically with the corruption of a State's representative by another negotiating State. The only provision of the 1963 text under which the corruption of a representative might be subsumed was article 33 dealing with fraud. At the second part of the seventeenth session, however, in connexion with its re-examination of article 35 (personal coercion of a representative)—now article 48—some members of the Commission expressed doubts as to whether corruption of a representative can properly be regarded as a case of fraud. The Commission therefore decided to reconsider the question at the present session with a view to the possible addition of a specific provision concerning corruption in either former article 33 or 35.

(2) At the present session certain members of the Commission were opposed to the inclusion in the draft articles of any specific provision regarding "corruption". These members considered such a provision to be unnecessary especially since the use of corruption, if it occurred, would in their view fall under the present article 46 as a case of fraud. Corruption, they maintained, is not an independent cause of defective consent but merely one of the possible means of securing consent through "fraud" or "*dol*". It would thus be covered by the expression "fraudulent conduct" (*conduite frauduleuse, conducta fraudulenta*) in article 46.

(3) The majority of the Commission, however, considered that the corruption of a representative by another negotiating State undermines the consent which the representative purports to express on behalf of his State in a quite special manner which differentiates the case from one of fraud. Again, although the corruption of a representative may in some degree be analogous to his coercion by acts directed against him personally, the Commission considered that cases of threat or use of force against a representative are of such particular gravity as to make it desirable to treat the two grounds of invalidity in separate articles. Nor did it think that "corruption" could be left aside altogether from the draft articles. It felt that in practice attempts to corrupt are more likely than attempts to coerce a representative; and that, having regard to the great volume of treaties concluded to-day and the great variety of the methods of concluding them, a specific provision on the subject is desirable. Accordingly, it decided to cover "corruption" in a new article inserted between the article dealing with "fraud" and that dealing with "coercion of a representative of a State".

(4) The strong term "corruption" is used in the article expressly in order to indicate that only acts calculated to exercise a substantial influence on the disposition of the representative to conclude the treaty may be invoked as invalidating the expression of consent which he has purported to give on behalf of his State. The Commission did not mean to imply that under the present article a small courtesy or favour shown to a representative in connexion with the conclusion of a treaty may be invoked as a pretext for invalidating the treaty.

(5) Similarly, the phrase "directly or indirectly by another negotiating State" is used in the article in order to make it plain that the mere fact of the representative's having been corrupted is not enough. The Commission appreciated that corruption by another negotiating State, if it occurs, is unlikely to be overt. But it considered that, in order to be a ground for invalidating the treaty, the corrupt acts must be shown to be directly or indirectly imputable to the other negotiating State.

(6) The Commission was further of the opinion that in regard to its legal incidents "corruption" should be assimilated to "fraud" rather than to "coercion of a representative". Accordingly, for the purposes of article 41, paragraph 4, concerning the separability of treaty provisions, article 42, concerning loss of a right to invoke a ground of invalidity, and article 65, paragraph 3, concerning the consequences of the invalidity of a treaty, cases of corruption are placed on the same footing as cases of fraud.

Article 48.[illegible] Coercion of a representative of the State

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him personally shall be without any legal effect.

Commentary

(1) There is general agreement that acts of coercion or threats applied to individuals *with respect to their own persons or in their personal capacity* in order to procure the signature, ratification, acceptance or approval of a

---

[illegible] New article.

[illegible] 1963 draft, article 35.

Exhibit LC-M 34

I

LA BONNE FOI DANS LA CONCLUSION DU TRAITE

Les Hautes Parties contractantes sont toujours présumées agir de bonne foi[8]. Le principe protège les Etats lors de la conclusion du traité. Il permet de résoudre l'épineuse question de la violation des dispositions de droit interne concernant la compétence pour conclure les traités, question qu'on exclura de l'étude en raison de son ampleur[9]. On voudrait relever quelques applications moins importantes, mais moins remarquées du principe de la bonne foi, tant lors de la négociation que lors de la ratification du traité.

a) *Bonne foi et négociations.*

A l'ouverture des négociations, les parties ne se sont engagées à rien. L'obligation de bonne foi trouve sa source dans le droit international général. Elle prohibe les manœuvres dolosives et impose la loyauté : formules générales dont il faut préciser le contenu.

⁂

Le dol est sanctionné en droit international comme en droit interne par la nullité de l'engagement. La Commission du droit international lui consacre deux articles dans son projet sur le droit des traités[10]. L'article 46 déclare qu'un Etat qui a été amené à conclure un traité par la conduite frauduleuse d'un autre Etat ayant participé à la négociation peut invoquer le dol comme viciant son consentement à être lié par le traité. L'article 47 ajoute que la corruption du représentant d'un Etat par l'action directe ou indirecte d'un autre Etat ayant participé à la négociation vicie le consentement. Mais il est significatif que la Commission ne cite dans son commentaire aucun cas de dol. Elle a d'ailleurs hésité à y consacrer un article particulier, toute représentation dolosive d'un fait important entraînant une erreur substantielle et tombant donc sous le coup de l'article 45. L'article 46 n'a été inséré dans le projet que parce que le dol « détruit toute base de la confiance mutuelle entre les parties »[11].

---

[8] Op. diss. SEFERIADES dans l'affaire des *Phares*, *C.P.J.I.*, série A/B, n° 62, p. 47.

[9] *Cf.* parmi les nombreuses études consacrées à la question BASDEVANT, *R.C.A.D.I.*, 1929, V; BLIX, *Treaty-Making Power;* McNAIR, *The Law of Treaties*, 1961, pp. 58 et ss.; C.D.I., *Rapport sur sa 18e session*, Doc. A/6309/Rev. 1, pp. 73 et ss. Le commentaire de la Commission du droit international révèle une double application du principe de la bonne foi. D'une part, l'Etat est normalement lié par un traité conclu en violation de ses règles de droit interne, car la faute incombe à son représentant et la bonne foi exige que ses partenaires n'en souffrent pas. D'autre part, si la violation du droit interne est « objectivement manifeste pour tout Etat agissant normalement et de bonne foi » (Commentaire, p. 76), l'Etat peut alléguer le vice de consentement; le principe de la bonne foi exige alors que ses partenaires s'abstiennent de contracter avec un représentant qui viole ouvertement le droit interne.

[10] Doc. A/6309/Rev. 1, pp. 77 et ss. On pourrait aussi considérer les hypothèses de contrainte exercée sur le représentant d'un Etat (article 48) ou sur l'Etat lui-même (article 49) comme des manquements au principe de la bonne foi. Mais il s'agit alors d'un aspect secondaire du problème, qui est dominé par l'interdiction du recours à la force.

Il ne faut pas se faire d'illusions sur la portée de ces articles. Invoquer une pareille cause de nullité est une décision grave, qui porte atteinte à la réputation de l'Etat soupçonné. La partie victime d'une manœuvre dolosive préférera se cantonner dans le terrain objectif de l'erreur substantielle. Les notes diplomatiques ou plaidoiries sauront utiliser à demi-mot les circonstances de l'affaire pour renforcer une argumentation qui laisse intact l'honneur de l'adversaire. On touche ici aux difficultés de la preuve de la mauvaise foi.

En outre, la nullité de l'engagement est une sanction trop lourde pour le principe de la bonne foi. Lorsque la peine est disproportionnée à l'offense, le délit reste impuni. Or les entorses à la bonne foi sont rarement si grossières. Le combat se déroule à fleurets mouchetés et les diplomates répugnent à y dégainer un sabre. Dans la mesure où la bonne foi est sanctionnée par la nullité du traité, l'application pratique du principe restera exceptionnelle.

Aussi la société internationale a-t-elle cherché une sanction plus nuancée, qui permette de réprimer la violation de la bonne foi avec efficacité. La mise en œuvre de la responsabilité internationale, outre qu'elle est difficile à engager, n'offre pas une compensation adéquate. En revanche, il est possible de faire supporter à l'auteur de l'infraction les conséquences de son attitude; l'interprétation du traité apparaît alors comme une véritable sanction juridique.

⁂

La bonne foi entre en ligne de compte pour l'interprétation des traités à deux titres différents. D'une part, « un traité doit être interprété de bonne foi »[12]. L'obligation de bonne foi se rattache alors au principe *pacta sunt servanda*, qui régit l'exécution du traité et condamne l'interprétation abusive avancée par une partie après la conclusion du traité. D'autre part, les parties sont présumées avoir négocié de bonne foi et l'interprète doit retenir le sens conforme à cette présomption. La règle sanctionne alors l'obligation de se conduire de bonne foi avant la conclusion du traité. Trois applications permettent d'en saisir la portée.

En premier lieu, les parties sont censées s'être conduites d'une manière loyale et raisonnable. Heffter, dans son *Völkerrecht* (paragraphe 95) déclare :

---

[11] Doc. A/6309/Rev. 1, p. 78.

[12] Article 27 du projet de la Commission du droit international. Doc. A/6309/Rev. 1, p. 51.

Exhibit LC-M 35

THE
BRITISH YEAR BOOK OF INTERNATIONAL LAW
1959

THIRTY-FIFTH YEAR OF ISSUE

Issued under the auspices of the
Royal Institute of International Affairs

OXFORD UNIVERSITY PRESS
LONDON NEW YORK TORONTO
1960

elsewhere[1] that this very fact may create for States an international legal duty to act *uberrimae fidei*, not only in the discharge of obligations they acknowledge the law to impose, but also in the exercise of the rights and liberties it confers. The duty of conduct *uberrimae fidei*, as is well known, normally arises with reference to certain contracts, such as contracts of insurance, where one of the parties, in order to assess the risk or other material factors involved, is obliged to rely on information supplied by the other party, and lying peculiarly, or exclusively, within that party's knowledge. A somewhat similar situation can arise in inter-State relations, and an application of the same principle (as was indicated in earlier articles in this Series)[2] was made in the *Corfu* case (merits),[3] where the Court and certain individual judges seem to have taken the view that the very fact that a State had exclusive control over its own territory, in which no other State could carry on any public activity without its consent, might place it under a special duty to account for what occurred there, furnish information, &c.[4] An analogous principle was applied in the *Island of Palmas* case[5] where the Arbitrator pointed out that the very nature of the exclusive jurisdiction exercised by a State in its own territory had as its corollary the duty to protect foreign rights and interests there. This duty, and in particular the duty of acting in good faith in carrying it out, is of course enhanced by the fact that not only is there, as a rule, no certainty that an aggrieved foreign State will be able to bring the matter before an international tribunal or other appropriate forum, or obtain the enforcement of any finding given in its favour if it does, but also that self-help in the shape of recourse to force is now in general[6] ruled out as a method of asserting State rights. It would be paradoxical indeed if the very absence of any certain method of asserting a right to action in good faith by other States were to be regarded as negativing the existence of the right itself. Moreover, such a doctrine would be destructive of the obligatory force of a large part of international law, for similar disabilities exist in regard to the enforcement of most international obligations. This is not, of course, what Sir Hersch Lauterpacht intended to imply. He was dealing with a particular case. But if it is correct, as was suggested, though not positively affirmed, in subsection (*a*) above, that a tribunal such as the International Court would

[1] Loc. cit. on p. 188, above, nn. 4 and 5, pp. 54–55.

[2] See this *Year Book*, 29 (1952), subsection (*c*) on pp. 58–59.

[3] See ibid., p. 59.

[4] See this *Year Book*, 27 (1950), chap. ii, § 2 (*a*) and (*b*) on pp. 19–22.

[5] U.N. Series of *Reports of International Arbitral Awards*, vol. ii; and *American Journal of International Law*, 21 (1928).

[6] That there are circumstances, other than the obvious case of individual or collective self-defence against armed attack, which may legitimately admit of some use of force hardly admits of doubt. But the subject is a difficult one. See Waldock, 'The Regulation of the Use of Force by Individual States' in *Recueil des Cours*, 81 (1952), ii, p. 455; Bowett, 'The Use of Force in the Protection of Nationals', *Transactions of the Grotius Society*, 43 (1959), p. 111; and the present writer in loc. cit. on p. 188, above, nn. 4 and 5, pp. 171–4.

Exhibit LC-M 36

INTERNATIONAL LAW REPORTS

1957

EDITED
BY
THE LATE
SIR HERSCH LAUTERPACHT, Q.C., LL.D., F.B.A.
JUDGE OF THE INTERNATIONAL COURT OF JUSTICE;
BENCHER OF GRAY'S INN; MEMBER OF THE INSTITUTE
OF INTERNATIONAL LAW

AND

E. LAUTERPACHT
FELLOW OF TRINITY COLLEGE, CAMBRIDGE;
OF GRAY'S INN, BARRISTER-AT-LAW

LONDON
BUTTERWORTHS
1961

" In effect, in order to appreciate in its essence the necessity for prior agreement, one must envisage the hypothesis in which the interested States cannot reach agreement. In such case, it must be admitted that the State which is normally competent has lost its right to act alone as a result of the unconditional and arbitrary opposition of another State. This amounts to admitting a ' right of assent ', a ' right of veto ', which at the discretion of one State paralyses the exercise of the territorial jurisdiction of another.

" That is why international practice prefers to resort to less extreme solutions by confining itself to obliging the States to seek, by preliminary negotiations, terms for an agreement, without subordinating the exercise of their competences to the conclusion of such an agreement. Thus, one speaks, although often inaccurately, of the ' obligation of negotiating an agreement '. In reality, the engagements thus undertaken by States take very diverse forms and have a scope which varies according to the manner in which they are defined and according to the procedures intended for their execution; but the reality of the obligations thus undertaken is incontestable and sanctions can be applied in the event, for example, of an unjustified breaking off of the discussions, abnormal delays, disregard of the agreed procedures, systematic refusals to take into consideration adverse proposals or interests, and, more generally, in cases of violation of the rules of good faith (*Tacna-Arica Arbitration*: *Reports of International Arbitral Awards*, vol. II, pp. 921 *et seq.*;[1] *Case of Railway Traffic between Lithuania and Poland*: *P.C.I.J.*, Series A/B, No. 42, pp. 108 *et seq.*[2]).

" In the light of these general observations, and in relation to the present case, we will now examine in turn whether a prior agreement is necessary and whether the other rules laid down by Article 11 of the Additional Act have been observed.

"*A. The necessity for a prior agreement.*

" 12. First, to enquire whether the argument that the execution of the French scheme is subject to the prior agreement of the Spanish Government is justified in relation to the system of *compascuités* or *faceries* or in relation to international common law; the collected evidence would permit, if necessary, the interpretation of the Treaty and the Additional Act of 1866, or rather, according to the wider formula given in the Spanish argument, to affirm the existence of a general principle of law, or of a custom, the recognition of which, *inter alia*, is embodied in the Treaty and the Additional Act of 1866 (Spanish Memorial, p. 81).

" The Spanish Government has endeavoured to demonstrate that ' the demarcation line at the Pyrenean boundary constitutes a zone organized in conformity with a special law, customary in nature, incorporated in international law by the Boundary Treaties which

[[1] See also *Annual Digest*, 1925–1926, Case No. 269.]

[[2] *Ibid.*, 1931–1932, Case No. 215.]

Exhibit LC-M 37

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

VOLUME VII

Decisions of Mixed Claims Commission
UNITED STATES — GERMANY
Part One

Décisions de la Commission mixte de réclamations
ETATS-UNIS — ALLEMAGNE
Première partie

UNITED NATIONS — NATIONS UNIES

American national who has sustained a loss receive in addition to full compensation "smart money" rather than another? Should the full amount of the penalty be imposed in connection with a particular claim, or in connection with a particular incident out of which a number of claims arose, or in connection with all acts of a particular class? Why impose a penalty for the use and benefit of a small group of American nationals who are awarded full compensation, and at the same time waive reimbursement for the cost of the war which falls on all American taxpayers alike?

If it were competent for this Commission to impose such a penalty, what penalty stated in terms of dollars would suffice as a deterrent? And if this Commission should arrogate to itself the authority to impose in the form of damages a penalty which would effectively serve as a deterrent, where lie the boundaries of its powers? It is not hampered with any constitutional limitations save those found in the Treaty; and if the power to impose a penalty exists under the Treaty may not the Commission exercise that power in a way to affect the future political relations of the two Governments? [25] The mere statement of the question is its answer. Putting the inquiry only serves to illustrate how repugnant to the fundamental principles of international law is the idea that this Commission should treat as justiciable the question as to what penalty should be assessed against Germany as a punishment for its alleged wrongdoing. It is our opinion that as between sovereign nations the question of the right and power to impose penalties, unlimited in amount, is political rather than legal in its nature, and therefore not a subject within the jurisdiction of this Commission.

The Treaty is our charter. We can not look beyond its express provisions or its clear implications in assessing damages in any particular claim. We hold that its clear and unambiguous language does not authorize the imposition of penalties. Hence the fundamental maxim "It is not allowable to interpret that which has no need of interpretation" applies. [26] But all of the rules governing the interpretation of treaties would lead to the same result were it competent for us to look to them. Some of these are: The Treaty is based upon the resolution of the Congress of the United States, accepted and adopted by Germany. The language, being that of the United States and framed for its benefit, will be strictly construed against it. [27] Treaty provisions must be so construed as to best conform to accepted principles of international law rather than in derogation of them. [28] Penal clauses in treaties are odious and must be construed most strongly against those asserting them. [29]

The Treaty is one between two sovereign nations—a Treaty of Peace. There is no place in it for any vindictive or punitive provisions. Germany must make

---

[25] Vattel, Book II, Chapter XVIII, Sec. 329.

[26] Vattel, Book II, Chapter XVII, Sec. 263.

[27] Vattel, Book II, Chapter XVII, Sec. 264; Digest of Justinian, Book II, Title XIV, paragraph 39, Monro translation, 1904; "Treaties—Their Making and Enforcement" by Samuel B. Crandall, 2nd (1916) edition (hereinafter cited as "Crandall"), sec. 171, page 401; Pothier on Obligations (Evans, 1806), Vol. I, page 58 (7th rule, Article VII, Chapter I, Part I); Woolsey on International Law, 6th (1891) edition, sec. 113; opinion of Ralston, Umpire, Italian-Venezuelan Mixed Claims Commission, Sambiaggio Case, Venezuelan Arbitrations 1903, pages 666 and 688-689.

[28] Opinion of Plumley, Umpire, in Arao Mines (Limited) Case, British-Venezuelan Mixed Claims Commission, pages 344 and 386-387 Venezuelan Arbitrations 1903; reference to Sambiaggio Case in note 27 above; Vilas *v.* Manila, 1911, 220 United States 345, 358-359; Crandall, sec. 170.

[29] Vattel, Book II, Chapter XVII, sections 301-303; Grotius, Book II, Chapter XVI, Sec. X and paragraph 3 of Sec. XII.

Exhibit LC-M 38

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

VOLUME II

NATIONS UNIES — UNITED NATIONS

d'ordre différent pour connaître des diverses catégories de réclamations mentionnées par le § 4.

L'arbitre arrive à une solution analogue pour les motifs suivants:

a) La clause discutée impose une obligation à l'Allemagne. Suivant la règle constamment suivie par le Tribunal arbitral mixte roumano-allemand, les clauses de ce genre ne doivent pas être étendues, par voie d'interprétation, au delà du sens que l'Etat allemand pouvait raisonnablement prêter au texte soumis à son acceptation. La clause ambiguë s'interprète, en principe, contre celui qui l'a rédigée.

b) Le sens péjoratif de l'expression « acte commis » a été justement relevé par toutes les instances qui se sont déjà prononcées, notamment par l'arbitre unique anglo-allemand, dans sa sentence de principe *Chatterton versus German Government*[1]. L'historique de la clause vient, en outre, si clairement à l'appui de la thèse allemande qu'il paraît *a priori* évident que le § 4 n'a voulu viser que des actes illicites ou au moins blâmables.

c) Si l'expression « actes commis » est fréquemment employée dans la terminologie du droit des gens, elle est aussi d'usage courant dans le langage du droit commun. Son emploi ne prouve donc pas, à lui seul, que le § 4 vise les actes « contraires au droit des gens », plutôt que les actes illicites ou blâmables en général[2].

L'argument décisif doit être cherché, comme l'a fait le Tribunal arbitral neutre portugais-allemand, surtout dans l'institution de la juridiction spéciale de l'arbitre unique.

La thèse roumaine écarte, en ce qui concerne la réparation, toute distinction entre les dommages « dits de neutralité » et les dommages résultant de mesures exceptionnelles de guerre.

---

[1] "The words 'act committed' cannot be considered as having altogether neutral meaning, as for instance the words 'act done', which are found in Art. 299 (*a*) of the Treaty. In the English as well as in the French language, the word 'committed' implies censure and it appears to the arbitrator that the acts contemplated in paragraph 4 are such as were considered by the framors of the Treaty as acts *to be blamed*, acts *which were wrong*. . . ."

[2] La thèse roumaine, se référant à la plaidoirie citée de M. Politis, invoque en faveur de cette dernière interprétation la jurisprudence de l'arbitre unique anglo-allemand, qu'elle oppose à celle de la Cour de La Haye.

Cette argumentation, qui suppose entre les deux instances une diversité d'opinion dont l'arbitre unique anglo-allemand s'est expressément défendu (*) dans sa sentence Mellentin contre État allemand (*claim* 67), n'est toutefois pas fondée. Après avoir, dans sa décision de principe, déclaré que le § 4 ne visait que des actes illicites ou au moins blâmables, l'arbitre anglo-allemand n'a nullement exclu que ce caractère illicite ou blâmable dût être déterminé suivant les principes du droit international. Il s'est borné à constater que rien, dans le § 4, ne permettait de limiter son application au cas où l'« acte commis » impliquerait la violation d'une règle précise du droit international écrit (*a distinct violation of a clear rule of international written law*).

Il n'y a aucune contradiction entre cette opinion et celle de la Cour de La Haye qui, elle aussi, n'a nulle part limité la notion de « droit des gens » aux règles précises du droit international *écrit*.

(*) "As to the decision given by the Permanent Court of International Justice, the arbitrator does not think that the line which he has followed shows any discrepancy with the opinion given by the High International Court at The Hague", Sentence J. Mellentin *v.* German Government, 28. XII. 1925, p. 6, alin. 3.

Exhibit LC-M 39

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

VOLUME III

NATIONS UNIES — UNITED NATIONS

Moreover, the attitude of the Committee set up under Article 10, III, of the Baden-Baden Agreement shows that it agreed with the interpretation of the Governing Commission. For its duty was to satisfy itself that the Fund was being administered in accordance with the provisions of the Agreement. The Committee held meetings at which minutes were taken. These minutes were submitted to the member of the Governing Commission in charge of finance. In accordance with these documents, the half-yearly balances and profit and loss statements are ascertained and the accounts checked by the Committee in conformity with its Statute. The Committee never at any time objected to the withdrawal of funds which were shown clearly in the accounts.

And

Whereas

1. The dispute falls to be decided by *German law*. For throughout the duration of the Saar Statute the Saar Territory remained part of the German State—and of the territory under German law—only with the exception that the powers of government were, by Article 49 of the Treaty of Versailles, transferred to the League of Nations as trustee, and that the Governing Commission that was to be set up by the League (§ 16 of the Saar Statute) was entitled to modify German law in so far as required in the execution of the Treaty of Versailles (§ 23 of the Saar Statute). It is thus a dispute between the German Reich and an autonomous part of the Reich. Moreover, the parties agree that German law is applicable to the case.

2. *The terms of Article* 10 *of the Baden-Baden Agreement* of December 21st, 1925, support the interpretation here put forward by the German Government. No. I of the Article provides that the Governing Commission of the Saar Territory shall be responsible for the pensions of officials in its service and for their dependants; and No. II that the Governing Commission shall further establish a Fund on behalf of the government to which pensions liabilities will be transferred on the expiry of the Saar Statute. Payments into the Fund are to be 17.5% of total emoluments, with the deduction of the amount paid for pensions. But it does not follow from No. II, and it is plainly contradictory with No. I, to assert that, with the payment of 17.5% of the total emoluments, partly direct to the pensioners and partly to the Pensions Fund, the Governing Commission has fulfilled all its duties as regards pensions, towards officials in its service and towards their dependants. This is confirmed by No. III, which provides that the Fund must be transferred "in its entirety" to the successor Government. For the Fund only remains "entire" if sums that have been paid into it, and, above all, the interest on these sums, are not removed from the Fund. So that any exceptions to the duty of the Governing Commission to maintain the Fund "entire" must have been specially provided for; and this was not done.

3. Again, *by way of interpretation*, no other meaning can be given to Article 10 than that given by the German Government. The rule that in case of doubt, the text of a treaty is to be interpreted against the party which drafted it can only be applied when, as in the case of the Treaty of Versailles, one of the parties handed a prepared text to the other party for signature. The Baden-Baden Agreement was the subject of lengthy negotiations, precisely in regard to the question of officials' pensions, and the parties came to mutual agreement on their proposals step by step. In such a case,

Exhibit LC-M 40

INTERNATIONAL LAW REPORTS

Volume 27

EDITED
BY
E. LAUTERPACHT
FELLOW OF TRINITY COLLEGE, CAMBRIDGE;
OF GRAY'S INN, BARRISTER-AT-LAW

LONDON
BUTTERWORTHS
1963

later on emphasized somewhat less strongly the rule ***verba chartarum fortius accipiuntur contra proferentem.*** It maintained that it was Aramco which had applied for the Concession and which had prepared its draft. All omissions or ambiguities in the text should therefore be interpreted against the Company, since it has not been proved that the Government ever intended to surrender its rights to regulate sea transport. Such a surrender should be clearly expressed, as the exclusive right to transport, it is alleged, only concerns the exclusive area. The Tribunal feels bound to observe that no proof has been furnished to the effect that the conclusion of the contract was due to Aramco's initiative. The Company has maintained—and its statement has not been questioned—that, after the unsuccessful experience of the grant to the Eastern and General Syndicate, a British corporation, the Government sent an authorized agent to the United States to approach an American company and persuaded Socal to apply for a concession, after other companies had indicated lack of interest. The rule *contra proferentem* can have its full effects only in the case of so-called ' adhesion contracts ', whose terms are not discussed between the Parties, or when, in inter-State relations, one Party hands to the other, for signature, a prepared text which can be modified only in order better to ensure its application, as was the case with the Treaty of Versailles. If it appears certain that the first drafts were prepared by the concessionary Company's experts, it must not be forgotten that the Government was acquainted with the system of oil concessions.

" Protracted discussions over a period of months took place. After the interchange of ideas and the examination of drafts prepared, sometimes by one, sometimes by the other Party, these discussions led to the 1933 Agreement, which is the product of joint effort. The theoretical basis of the rule *contra proferentem*, it may be noted in passing, is somewhat doubtful for it starts from the unverified premise that the Party who has not drafted the text of the contract is less careful and less able than the Party who drafted it. The rule itself, in any event, cannot be applied in the case of mining or oil concessions, where the elementary duty of the authorities of the State is to scrutinize thoroughly the texts prepared and where they cannot have given their consent by surprise. It follows that the rule might well be directed against them and that they might be criticized, if the agreement contains any ambiguity or lacuna, for not having exercised their functions with the care and the diligence required from agents of the State. Moreover, as the principle of interpretation *contra proferentem* is disputed, it is applied only, in international and national decisions, when all other means of interpretation have proved ineffective. In the Tribunal's opinion, such is not the case here, and the principle of effectiveness, *i.e.*, by the full effect of the essential purpose, confirms the results of the

Exhibit LC-M 41

CHARLES DE VISSCHER

PROFESSEUR A L'UNIVERSITÉ DE LOUVAIN,
ANCIEN JUGE A LA COUR INTERNATIONALE DE JUSTICE,
PRÉSIDENT D'HONNEUR DE L'INSTITUT DE DROIT INTERNATIONAL,
MEMBRE DE L'ACADÉMIE ROYALE DE BELGIQUE,
CORRESPONDANT DE L'INSTITUT DE FRANCE.

THÉORIES ET RÉALITÉS EN DROIT INTERNATIONAL PUBLIC

TROISIÈME ÉDITION
revue et augmentée

PARIS
ÉDITIONS A. PEDONE
LIBRAIRIE DE LA COUR D'APPEL ET DE L'ORDRE DES AVOCATS
13, Rue Soufflot, 13

1960

blicité qui les entoure, tendent à notre époque, à abréger la durée de la période requise pour une consolidation par l'action du temps (V. *infra*) (1).

Dans l'affaire des Pêcheries (Royaume-Uni - Norvège), la Cour internationale de Justice a estimé qu'un système de délimitation de la zone de pêche norvégienne qui, durant une période de plus de soixante ans, avait bénéficié de la tolérance générale des Etats tiers, n'avait pu échapper à la vigilance d'une grande Puissance maritime directement intéressée au régime des pêcheries dans ces régions. Sans aller jusqu'à déduire de son silence un acquiescement proprement dit, elle a constaté que « la notoriété des faits, la tolérance générale de la communauté internationale, la position de la Grande-Bretagne dans la Mer du Nord, son intérêt propre dans la question, son abstention prolongée, permettraient en tout cas à la Norvège d'opposer son système au Royaume-Uni ». C'est là une saine appréciation des conditions de notoriété qui s'accorde pleinement avec les exigences de la stabilité dans les rapports internationaux.

4. *La consolidation par titres historiques*

L'intérêt fondamental que présente, du point de vue de l'ordre et de la paix, la stabilité des situations territoriales explique la place que tient dans le droit international la consolidation par titres historiques et la souplesse de ses applications. C'est tout particulièrement pour ces situations que la jurisprudence arbitrale a sanctionné le principe *quieta non movere* tant par considération pour leur importance propre dans les rapports entre Etats qu'à cause de la gravité politique des contestations qui les concernent (2). Cette consoli-

(1) Pour éviter des discussions inutiles, on préférera le terme consolidation à celui de prescription acquisitive. Cfr. D.H.N. Johnson, « Acquisitive Prescription in International Law », *British Year Book of International Law*, 1950, p. 332.

(2) Sentence de la Cour permanente d'arbitrage dans l'affaire des Grisbadarna (Norvège-Suède), 23 octobre 1909 : « Que, dans le droit des gens, c'est un principe bien établi qu'il faut s'abstenir autant que possible de modifier l'état des choses existant de fait et depuis longtemps ». Travaux de la Cour permanente d'arbitrage, Publications de la Dotation Carnegie, p. 135. — Cette considération n'a pas été étrangère à l'arrêt de la Cour permanente de Justice internationale dans l'affaire du Groenland oriental (Danemark-Norvège).

dation, qui peut présenter un intérêt pratique pour les territoires non encore aménagés définitivement en régime d'Etat ainsi que pour certains espaces maritimes tels que les baies, n'est pas assujettie aux conditions spécifiquement requises pour d'autres modes d'acquisition du territoire. Le long usage établi, qui en est le fondement, ne fait que traduire un ensemble d'intérêts et de relations qui tendent par eux-mêmes à rattacher un territoire ou un espace maritime à un Etat déterminé. Ce sont ces intérêts et relations, variables d'une espèce à une autre, et non l'écoulement d'une période préfixe, d'ailleurs inconnue du droit international, qui sont pris directement en considération par le juge pour apprécier *in concreto* l'existence ou la non-existence d'une consolidation par titres historiques.

Par ce côté, celle-ci diffère de la prescription acquisitive proprement dite, tout comme par la circonstance qu'elle peut s'appliquer à des territoires dont l'appartenance antérieure à un autre Etat ne saurait être établie (1). Elle diffère de l'occupation par le fait qu'elle peut être admise pour certains espaces maritimes aussi bien que pour le domaine terrestre. Enfin, elle se distingue de la reconnaissance internationale — et c'est là le point pratiquement le plus important — par la circonstance qu'elle peut être réputée acquise non pas seulement par acquiescement proprement dit, acquiescement dans lequel le facteur temps peut ne jouer aucun rôle, mais plus aisément par une absence d'opposition suffisamment prolongée, soit pour le domaine terrestre de la part des Etats intéressés à contester la possession, soit pour les espaces maritimes de la part de la généralité des Etats (2).

5. *De l'effectivité dans la possession*

Dans l'histoire des acquisitions et mutations territoriales, le rapport des forces entre Etats en lutte pour le « rassemblement » ou l'expansion de leurs terres, a tenu une place pré-

---

(1) La prescription acquisitive, au contraire, tend à conférer un titre d'acquisition relativement à un territoire soumis à la souveraineté d'un autre Etat. Cfr. E. Beckett, *Rec. A.D.I.*, Vol. 50 (1934), p. 248, et D.H.N. Johnson, *op. cit.*, *British Year Book*, 1950, p. 332.

(2) Voyez M. Bourquin, « Les baies historiques », *Mélanges Sauser-Hall*, pp. 44 et ss.

Exhibit LC-M 42

THE BRITISH YEAR BOOK OF INTERNATIONAL LAW 1950

TWENTY-SEVENTH YEAR OF ISSUE

Issued under the auspices of the
Royal Institute of International Affairs

GEOFFREY CUMBERLEGE
OXFORD UNIVERSITY PRESS
LONDON NEW YORK TORONTO
1951

ACQUISITIVE PRESCRIPTION IN INTERNATIONAL LAW

By D. H. N. JOHNSON

Barrister-at-Law; formerly Whewell Scholar in International Law, University of Cambridge

Introductory

IT is necessary, at the outset, to distinguish between the following meanings of the word 'prescription' in international law:

(*a*) 'Prescription' is used in the sense of 'extinctive prescription' (*prescription libératoire*) or, as we would say in English law, of 'limitation'. In this sense prescription means that, if State A has an international claim against State B which it fails to bring before an international tribunal within a reasonable time, then the international tribunal before which the claim is eventually brought may reject it. This doctrine is subject to the rule that the failure to present the claim must be due to the negligence or laches of the claimant party and not due to the obstruction of the defendant party. The characteristic feature of 'extinctive prescription' as applied to property law is that, though the original possessor can no longer enforce them by action, his substantive rights are not abolished. It is not, however, this form of prescription with which this article is intended to deal.

(*b*) Prescription is also used in the sense of 'acquisitive prescription' (*prescription acquisitive*). In addition to the rule that claims not prosecuted within a reasonable time must be held to have lapsed, all legal systems have found it no less necessary to have a doctrine whereby legal validity can be given to titles to property that are either originally invalid or whose original validity it is impossible to prove. Such a doctrine is known by the name of 'acquisitive prescription'. Its distinguishing feature is that the party who succeeds in establishing a title under this doctrine obtains a substantive right whilst the substantive rights (if any) of the previous possessor (if there is one) are abolished. Confusion has arisen, however, because, apart from the distinction between 'extinctive prescription' and 'acquisitive prescription', writers have also sought to distinguish between different types of 'acquisitive prescription'. The distinction between 'extinctive prescription' and 'acquisitive prescription' is, as we have seen, relatively easy to follow. Writers such as Oppenheim[1] and Schwarzenberger[2] treat these two subjects entirely separately, and so does Verykios,[3] the author of in a treaty. It is one thing to allow opposition to prevent the establishment of a prescriptive title; it is quite another thing to invoke agitation as a reason for upsetting a state of things recognized by treaty.

---

[1] Oppenheim, *International Law*, vol. i (7th ed., by Lauterpacht, 1948). For 'extinctive prescription' see pp. 315–16; for 'acquisitive prescription' see pp. 526–9.

[2] Schwarzenberger, *International Law*, vol. i (2nd ed., 1949). For 'extinctive prescription' see pp. 246–8; for 'acquisitive prescription' see pp. 139–41.

[3] Verykios, *La Prescription en droit international public* (1934). For 'extinctive prescription' see chap. iii; for 'acquisitive prescription' see chap. ii. For a useful study of the law relating to

(iii) *The possession must be public*

The idea that clandestinity precludes prescription is common to all systems of law. It is often said that in international affairs clandestine possession of territory is hardly conceivable.[1] Although this may be so, it is essential to stress the importance of publicity as a condition of prescription. For acquisitive prescription does not operate solely in the sphere of the possession of territory properly so-called. By virtue of acquisitive prescription, as will be shown later, it is possible for a state to acquire not only a piece of territory at the expense of another state but also a number of rights at the expense of the international community. Publicity is essential because acquiescence is essential. For acquisitive prescription depends upon acquiescence, express or implied. Acquiescence is often implied, in the interests of international order, in cases where it does not genuinely exist; but without knowledge there can be no acquiescence at all.

(iv) *The possession must endure for a certain length of time*

Although there is a complete lack of agreement as to the time required for the establishment of a prescriptive title, this is not, as we have already stated,[2] a valid reason for rejecting acquisitive prescription as a rule of international law. Grotius favoured more than a hundred years;[3] Vattel referred to 'une longue possession non contestée;[4] F. de Martens[5] and Rivier[6] (as we have already seen) required 'immemorial possession'. The majority of writers conclude that the time varies with the facts of each case. According to Fauchille: 'L'opinion dominante est qu'en l'absence de loi positive il est impossible de fixer un délai: celui-ci doit varier dans chaque cas, avec les circonstances, c'est-à-dire selon la plus ou moins grande importance ou l'éloignement plus ou moins grand du territoire possédé, d'après la manière dont les actes de possession ont été pratiqués, suivant la position dans laquelle se trouvent les parties intéressées.'[7] Inconclusive though it may be, it is not possible to improve on this statement. The fixing of a fifty-year period by the treaty of 1897 in the British Guiana-Venezuela boundary dispute cannot be regarded as having laid down a general rule.

---

[1] Verykios writes: 'On peut critiquer de même l'exigence de la publicité comme étant absolument inutile en droit international, où on ne peut concevoir une possession clandestine' (op. cit., p. 75).

[2] Above, p. 334.

[3] Op. cit., book ii, chap. iv, s. 7.

[4] Op. cit., book ii, chap. xi, s. 149.

[5] Op. cit., vol. i, p. 460.

[6] Op. cit., vol. i, pp. 182-3.

[7] Op. cit., vol. i, part ii, p. 762. Audinet arrives at a similar conclusion (op. cit., pp. 323-4).

Exhibit LC-M 43

THE
CAMBRIDGE LAW JOURNAL
1954

EDITOR
S. J. BAILEY, LL.M.

Published under the auspices of
The Faculty of Law, University of Cambridge

LONDON
STEVENS & SONS LIMITED
1954

CONSOLIDATION AS A ROOT OF TITLE IN INTERNATIONAL LAW

D. H. N. JOHNSON *

ALTHOUGH the rules of international law relating to the acquisition of title to territory have long been substantially clearer than most rules of international law, this clarity has to some extent been obscured by the efforts of writers to make them clearer still. The clarity of the rules is due to the circumstance that this branch of international law—unlike some branches—is one on which international tribunals have frequently been called upon to pronounce. It has, in fact, been elucidated to an unusual degree by a relatively small number of recent and authoritative judgments.[1] The obscurity arises from the fact that the terms and classifications traditionally employed by the writers have not to any great extent been followed by the courts in modern times. No comprehensive attempt to overhaul the traditional doctrine on the subject in the light of the recent decisions seems so far to have been made.

Nor can any such attempt be made in the present article. It will, however, be suggested that some clarification can be achieved by developing the notion of consolidation as a root of title in international law.

THE TRADITIONAL CLASSIFICATIONS

It has long been a practice for writers upon international law to classify the various methods by which a State may acquire title to territory. Thus, Wheaton said: "The exclusive right of every independent State to its territory and other property is founded upon the title originally acquired by occupancy, conquest, or cession, and subsequently confirmed by the presumption arising from the lapse of time, or by treaties and other compacts with foreign States."[2] And, according to Hall, "A State may acquire

---

* M.A., LL.B., Trinity College; Reader in International Law, London School of Economics.

[1] In particular, the *Island of Palmas* case decided by Judge Huber in 1928 (*American Journal of International Law*—referred to subsequently as *A.J.I.L.*—22 (1928), p. 867); the *Clipperton Island* case decided by the King of Italy in 1931 (*A.J.I.L.*, 26 (1932), p. 390); the case of the *Legal Status of Eastern Greenland* decided by the Permanent Court of International Justice in 1933 (*P.C.I.J.* Series A/B No. 53); and the *Anglo-Norwegian Fisheries* and *Minquiers and Ecrehos* cases decided by the International Court of Justice (*I.C.J. Reports* 1951, p. 116, and *I.C.J. Reports* 1953, p. 47).

[2] *Elements of International Law* (Dana's ed., 1866, section 161).

must now be recognised although it constitutes a derogation from the rules in force." [29] After thus stating the Norwegian Government's attitude, however, the court did not expressly indicate whether it approved this attitude or not. But, having regard to the general tenor of the judgment, it seems reasonable to conclude that the court approved it. The court also made the following observations on the question of Norway's historic title:

> "From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States.
>
> Norway has been in a position to argue without any contradiction that neither the promulgation of her delimitation Decrees in 1869 and in 1889, nor their application, gave rise to any opposition on the part of foreign States. Since moreover, these Decrees constitute, as has been shown above, the application of a well-defined and uniform system, it is indeed this system itself which would reap the benefit of general toleration, *the basis of an historical consolidation which would make it enforceable as against all States.* . . . The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom." [30]

It seems reasonable to deduce from these various passages that the court recognised the existence both of "immemorial possession" (straightforward possession) and of "prescription properly so called" (adverse possession) as methods of acquiring title to territory. The court also seems to have confirmed the view that the appropriation by a single State of areas, which under general international law would be high seas, is a kind of adverse possession at the expense of the international community which requires the toleration or acquiescence of the generality of States. Given even a narrow definition of prescription, therefore, it is reasonable to conclude that title to such areas must be acquired through prescription rather than through occupation.

A New Approach by Professor de Visscher

It is now proposed to direct attention to the italicised portion of the passage quoted above because, in a recently published book, Professor Charles de Visscher, the distinguished Belgian jurist who

[29] *I.C.J. Reports*, 1951, p. 116 at p. 130.

[30] *Ibid.*, pp. 138–9. Italics ours.

was a member of the court at the time of the *Anglo-Norwegian Fisheries* case, appears to have made this portion, and the passage as a whole, the starting-point of a new and interesting approach to the problem. Under the heading "La consolidation par titres historiques" Professor de Visscher refers generally to the important place held in international law by "consolidation" as a method of acquiring title to territory. This method, he says, differs from "la prescription acquisitive proprement dite" in that, in addition to applying to cases of adverse possession, it is also a means of acquiring title to "des territoires dont l'appartenance antérieure à un autre Etat ne saurait être établie." By comparison, "la prescription acquisitive . . . tend à conférer un titre d'acquisition relativement à un territoire soumis à la souveraineté d'un autre Etat." Professor de Visscher also gives it as his view that consolidation differs from occupation "par le fait qu'elle peut être admise pour certains espaces maritimes aussi bien que pour le domaine terrestre." [31] He has thus embraced under a single heading the notion of straightforward possession on the one hand and of adverse possession on the other hand. He has, however, chosen as his general heading not the normal expression "acquisitive prescription," but rather the new expression "consolidation." As he himself says: "pour éviter des discussions inutiles, on préférera le terme consolidation à celui de prescription acquisitive." [32]

It seems, therefore, that Professor de Visscher has simplified the problem considerably. Under the single heading of "consolidation" it is now possible, as has just been indicated, to include both "straightforward possession" and "adverse possession." As for the expressions "acquisitive prescription" and "prescription properly so called" the way is now open either to abandon them altogether or else to confine them—as there has always been a tendency to confine them—to cases of "adverse possession."

The theory of "consolidation" may, however, have an even wider significance than the mere removal of certain confusions which had developed round the theory of "prescription." As Judge Huber indicated in the *Island of Palmas* case, it is necessary that a title be not only acquired, but also that it be continuously maintained, following "the conditions required by the evolution of law." Maintenance of a title is achieved through a State "manifesting its territorial sovereignty in a manner corresponding to circumstances." The circumstances vary "according as inhabited or uninhabited regions are involved." Another relevant factor is the absence or presence of competing claims giving rise to disputes. But if there is a dispute and "if the contestation is based on the fact that the other party has actually displayed sovereignty," then "it cannot be sufficient to establish the title by which territorial sovereignty was validly acquired at a certain moment; it must also be shown that the territorial sovereignty has continued to exist and did exist at the moment which for the decision of the dispute must be considered as critical. The demonstration consists in the actual display of State activities such as belongs only to the territorial sovereign." [33]

---

[31] *Théories et Réalités en Droit International Public* (1953), pp. 244–5.
[32] *Op. cit.*, p. 248, n. 2.

Judge Huber did well to stress the importance of *maintaining* titles as well as *acquiring* them, because there is a tendency among the writers to place less emphasis upon this aspect of the matter.[34] It is true that methods of *losing* titles are sometimes classified along with methods of acquiring them. But this practice seems to presuppose that, if a title is not actually lost through one of the recognised methods of loss, it is automatically maintained. This is to raise a large, and somewhat controversial, issue. In view of the eminence of the arbitrator and the exceptional breadth and clarity of his reasoning, there has been a tendency to regard Judge Huber's Award in the *Island of Palmas* case almost as an oracular pronouncement. Yet, as Professor Jessup has pointed out, one result of Judge Huber's approach might be that "Every State would constantly be under the necessity of examining its title to each portion of its territory in order to determine whether a change in the law had necessitated, as it were, a reacquisition. If such a principle were applied to private law and private titles, the result would be chaos. Title insurance would be an impossibility." Professor Jessup also criticises Judge Huber on the same issue for failing to consider sufficiently the question whether Spain (through whom the United States was claiming as successor) had ever "abandoned" the Island of Palmas.[35]

It is not possible, within the scope of this article, to consider in full Professor Jessup's criticisms of the *Island of Palmas* Award. It is believed, however, that many of these criticisms answer themselves provided it be understood that, whilst every title under international law must undergo a continuous process of "maintenance" or "manifestation," the degree of "maintenance" or "manifestation" required varies in accordance with the circumstances. In particular, it depends upon the absence or presence of competing claims. When such claims are present, a considerable degree of "manifestation" will be required. When they are absent, it may be sufficient merely that loss by abandonment can not be proved—provided always that, as soon as a competitor intrudes, the reaction of the legitimate proprietor is reasonably thorough and instantaneous. On this basis, Spain lost her title to the Island of Palmas—if she ever had it—through not sufficiently manifesting her title in the face of growing competition from the Netherlands. What, on the contrary, enabled France to retain her title in the *Clipperton Island* Arbitration was that, although she displayed no sovereignty over the island for nearly forty years after acquiring it in 1858, she nevertheless took immediate steps to assert her title as soon as it was challenged by competitors in 1897.[45]

---

[33] *Loc. cit.*

[34] Wheaton, however, indicated that titles must be "subsequently confirmed. Above, p. 215.

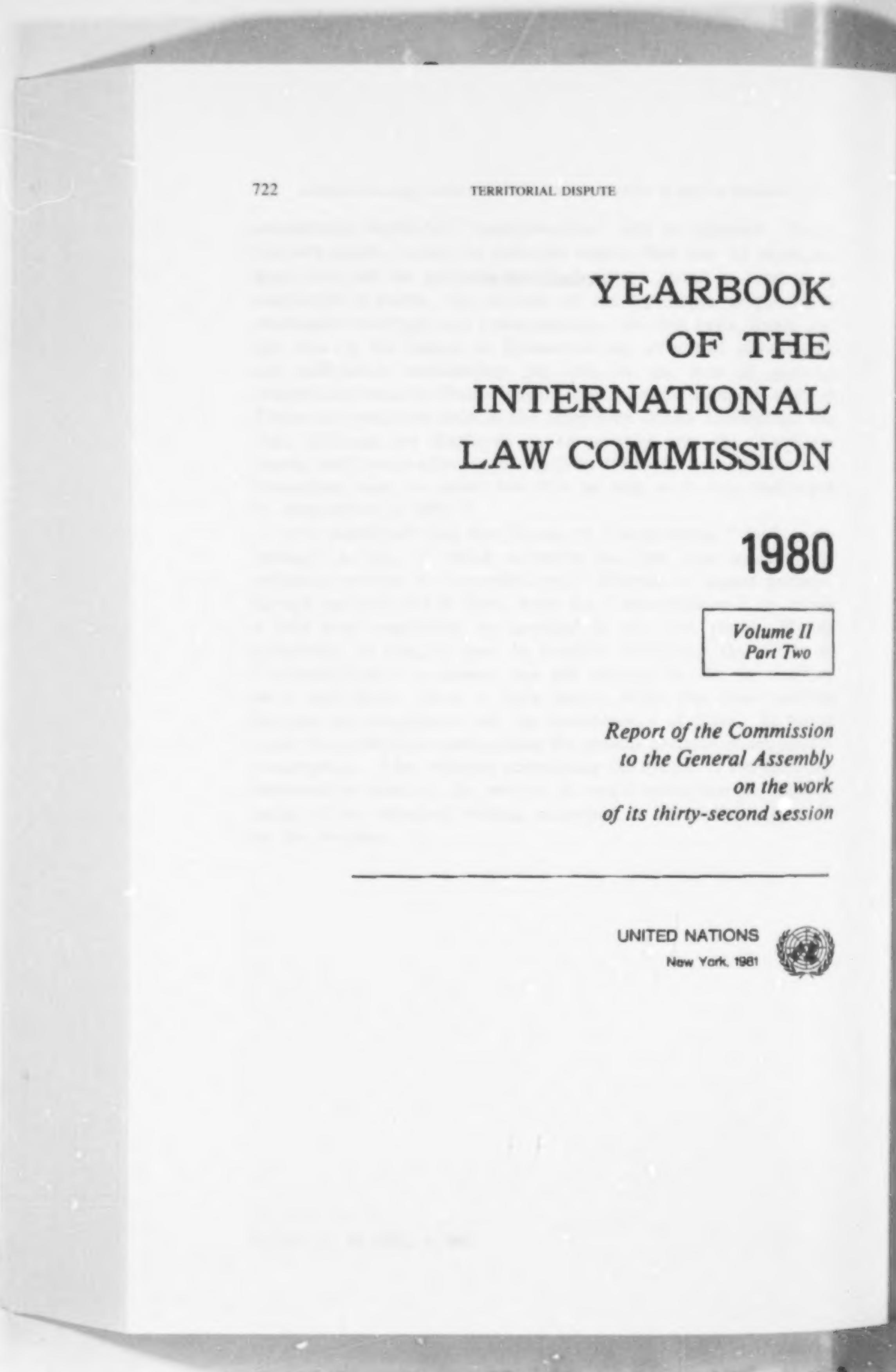
[35] *A.J.I.L.*, 22 (1928), pp. 740–1.

It is submitted that the process of "maintaining" or "manifesting" a title, to which reference has just been made, is in essence a process of "consolidation," different in degree perhaps, though certainly not in kind, from the "consolidation" by which a title may sometimes be acquired in the first place. If this submission be true, it may be possible, employing the notion of "consolidation," to present the law relating to title to territory on a new basis. Such a basis would stress the close relation between the *acquisition* and the *maintenance* of titles. It would avoid the ambiguities surrounding the present doctrine of acquisitive prescription. Also, without abandoning the system of classification favoured by most of the writers, it would endeavour to embody much of the practical wisdom contained in Westlake's approach to the problem.

---

[45] *A.J.I.L.*, 26 (1932), p. 390.

Exhibit LC-M 44



YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

1980

Volume II
Part Two

Report of the Commission
to the General Assembly
on the work
of its thirty-second session

UNITED NATIONS
New York, 1981

observations and comments on the provisions of chapters I, II and III of Part 1 of the draft articles on State responsibility for internationally wrongful acts. The General Assembly, in section I, paragraph 8, of resolution 33/139 of 19 December 1978, endorsed this decision of the Commission. The observations and comments received in response to that request have been reproduced in document A/CN.4/328 and Add.1–4.[111]

Having completed the first reading of the whole of Part 1 of the draft, the Commission decided at the present session to renew its request to Governments to transmit their observations and comments on the provisions of chapters I, II and III, and to ask them to do so before 1 March 1981. At the same time the Commission decided, in conformity with articles 16 and 21 of its Statute, to communicate the provisions of chapters IV and V to the Governments of Member States, through the Secretary-General, and to request them to transmit their observations and comments on those provisions by 1 March 1982.

The observations and comments of Governments on the provisions appearing in the various chapters of Part 1 of the draft will, when the time comes, enable the Commission to embark on the second reading of that part of the draft without undue delay.

(b) *Commencement of the consideration of Part 2 of the draft (The content, forms and degrees of international responsibility)*

32. In order to pursue its consideration of "State responsibility", in view of the former Special Rapporteur's election as a Judge of the International Court of Justice, the Commission, at its thirty-first session in 1979, appointed Mr. Willem Riphagen as Special Rapporteur for the topic.

At the present session, the Special Rapporteur submitted a preliminary report (A/CN.4/330)[112] on the basis of which the Commission reviewed a broad range of general and preliminary questions raised by the study of Part 2 of the draft, dealing with the content, forms and degrees of international responsibility. The views expressed in this connection by the members of the Commission are reproduced in the summary records of its 1597th to 1601st meetings.[113] A summary of these views and of the contents of the preliminary report submitted by the Special Rapporteur is given below[114] for the information of the General Assembly.

B. Resolution adopted by the Commission

33. The Commision, at its 1642nd meeting, on 25 July 1980, adopted by acclamation the follo resolution:

> *The International Law Commission,*
>
> *Having adopted* provisionally the draft articles on the · of international responsibility constituting Part 1 of the dr the responsibility of States for internationally wrongful acts,
>
> *Desires to express* to the former Special Rapporteur, Roberto Ago, its deep appreciation for the extraordi valuable contribution he has made to the preparation of the throughout these past years by his tireless devotion and inco labour, which have enabled the Commission to bring the reading of these draft articles to a successful conclusion.

C. Draft articles on State responsibility[115]

Part 1. *The origin of international responsibili*

34. The texts of all the articles of Part 1 of the d concerning the origin of international responsib adopted by the Commission on first reading a twenty-fifth to thirty-first sessions and at the pre session, and the texts of articles 33 to 35 and commentaries thereto, adopted by the Commissic the present session, are reproduced below.

1. TEXTS OF THE ARTICLES OF PART 1 OF THE DI ADOPTED BY THE COMMISSION ON FIRST READ

CHAPTER I

GENERAL PRINCIPLES

Article 1. Responsibility of a State for its internationally wrongful acts

Every internationally wrongful act of a State entails international responsibility of that State.

Article 2. Possibility that every State may be held to have committed an internationally wrongful act

Every State is subject to the possibility of being held to committed an internationally wrongful act entailing its national responsibility.

Article 3. Elements of an internationally wrongful act of a .

There is an internationally wrongful act of a State when:

(*a*) conduct consisting of an action or omission is attribu to the State under international law; and

(*b*) that conduct constitutes a breach of an internati obligation of the State.

Article 4. Characterization of an act of a State as internationally wrongful

An act of a State may only be characterized as internatio wrongful by international law. Such characterization canno affected by the characterization of the same act as lawfu internal law.

---

[111] Reproduced in *Yearbook . . . 1980*, vol. II (Part One).

[112] *Idem.*

[113] See *Yearbook . . . 1980*, vol. I, pp. 73 *et seq.*

[114] See paras. 35–48.

[115] As stated above (para. 21), the draft articles relate sol the responsibility of States for internationally wrongful acts. question of the final title of the draft will be considered by Commission at a later stage.

CHAPTER II

THE "ACT OF THE STATE" UNDER INTERNATIONAL LAW

Article 5. Attribution to the State of the conduct of its organs

For the purposes of the present articles, conduct of any State organ having that status under the internal law of that State shall be considered as an act of the State concerned under international law, provided that organ was acting in that capacity in the case in question.

Article 6. Irrelevance of the position of the organ in the organization of the State

The conduct of an organ of the State shall be considered as an act of that State under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinate position in the organization of the State.

Article 7. Attribution to the State of the conduct of other entities empowered to exercise elements of the government authority

1. The conduct of an organ of a territorial governmental entity within a State shall also be considered as an act of that State under international law, provided that organ was acting in that capacity in the case in question.

2. The conduct of an organ of an entity which is not part of the formal structure of the State or of a territorial governmental entity, but which is empowered by the internal law of that State to exercise elements of the governmental authority, shall also be considered as an act of the State under international law, provided that organ was acting in that capacity in the case in question.

Article 8. Attribution to the State of the conduct of persons acting in fact on behalf of the State

The conduct of a person or group of persons shall also be considered as an act of the State under international law if:

(*a*) it is established that such person or group of persons was in fact acting on behalf of that State; or

(*b*) such person or group of persons was in fact exercising elements of the governmental authority in the absence of the official authorities and in circumstances which justified the exercise of those elements of authority.

Article 9. Attribution to the State of the conduct of organs placed at its disposal by another State or by an international organization

The conduct of an organ which has been placed at the disposal of a State by another State or by an international organization shall be considered as an act of the former State under international law, if that organ was acting in the exercise of elements of the governmental authority of the State at whose disposal it has been placed.

Article 10. Attribution to the State of conduct of organs acting outside their competence or contrary to instructions concerning their activity

The conduct of an organ of a State, of a territorial governmental entity or of an entity empowered to exercise elements of the governmental authority, such organ having acted in that capacity, shall be considered as an act of the State under international law even if, in the particular case, the organ exceeded its competence according to internal law or contravened instructions concerning its activity.

Article 11. Conduct of persons not acting on behalf of the State

1. The conduct of a person or a group of persons not acting on behalf of the State shall not be considered as an act of the State under international law.

2. Paragraph 1 is without prejudice to the attribution to the State of any other conduct which is related to that of the persons or groups of persons referred to in that paragraph and which is to be considered as an act of the State by virtue of articles 5 to 10.

Article 12. Conduct of organs of another State

1. The conduct of an organ of a State acting in that capacity which takes place in the territory of another State or in any other territory under its jurisdiction shall not be considered as an act of the latter State under international law.

2. Paragraph 1 is without prejudice to the attribution to a State of any other conduct which is related to that referred to in that paragraph and which is to be considered as an act of that State by virtue of articles 5 to 10.

Article 13. Conduct of organs of an international organization

The conduct of an organ of an international organization acting in that capacity shall not be considered as an act of a State under international law by reason only of the fact that such conduct has taken place in the territory of that State or in any other territory under its jurisdiction.

Article 14. Conduct of organs of an insurrectional movement

1. The conduct of an organ of an insurrectional movement which is established in the territory of a State or in any other territory under its administration shall not be considered as an act of that State under international law.

2. Paragraph 1 is without prejudice to the attribution to a State of any other conduct which is related to that of the organ of the insurrectional movement and which is to be considered as an act of that State by virtue of articles 5 to 10.

3. Similarly, paragraph 1 is without prejudice to the attribution of the conduct of the organ of the insurrectional movement to that movement in any case in which such attribution may be made under international law.

Article 15. Attribution to the State of the act of an insurrectional movement which becomes the new government of a State or which results in the formation of a new State

1. The act of an insurrectional movement which becomes the new government of a State shall be considered as an act of that State. However, such attribution shall be without prejudice to the attribution to that State of conduct which would have been previously considered as an act of the State by virtue of articles 5 to 10.

2. The act of an insurrectional movement whose action results in the formation of a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered as an act of the new State.

CHAPTER III

BREACH OF AN INTERNATIONAL OBLIGATION

Article 16. Existence of a breach of an international obligation

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation.

Article 17. Irrelevance of the origin of the international obligation breached

1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act regardless of the origin, whether customary, conventional or other, of that obligation.

2. The origin of the international obligation breached by a State does not affect the international responsibility arising from the internationally wrongful act of that State.

Article 18. Requirement that the international obligation be in force for the State

1. An act of the State which is not in conformity with what is required of it by an international obligation constitutes a breach of that obligation only if the act was performed at the time when the obligation was in force for that State.

2. However, an act of the State which, at the time when it was performed, was not in conformity with what was required of it by an international obligation in force for that State, ceases to be considered an internationally wrongful act if, subsequently, such an act has become compulsory by virtue of a peremptory norm of general international law.

3. If an act of the State which is not in conformity with what is required of it by an international obligation has a continuing character, there is a breach of that obligation only in respect of the period during which the act continues while the obligation is in force for that State.

4. If an act of the State which is not in conformity with what is required of it by an international obligation is composed of a series of actions or omissions in respect of separate cases, there is a breach of that obligation if such an act may be considered to be constituted by the actions or omissions occurring within the period during which the obligation is in force for that State.

5. If an act of the State which is not in conformity with what is required of it by an international obligation is a complex act constituted by actions or omissions by the same or different organs of the State in respect of the same case, there is a breach of that obligation if the complex act not in conformity with it begins with an action or omission occurring within the period during which the obligation is in force for that State, even if that act is completed after that period.

Article 19. International crimes and international delicts

1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act, regardless of the subject-matter of the obligation breached.

2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole constitutes an international crime.

3. Subject to paragraph 2, and on the basis of the rules of international law in force, an international crime may result, *inter alia*, from:

(*a*) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;

(*b*) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;

(*c*) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid;

(*d*) a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.

4. Any internationally wrongful act which is not an international crime in accordance with paragraph 2 constitutes an international delict.

Article 20. Breach of an international obligation requiring the adoption of a particular course of conduct

There is a breach by a State of an international obligation requiring it to adopt a particular course of conduct when the conduct of that State is not in conformity with that required of it by that obligation.

Article 21. Breach of an international obligation requiring the achievement of a specified result

1. There is a breach by a State of an international obligation requiring it to achieve, by means of its own choice, a specified result if, by the conduct adopted, the State does not achieve the result required of it by that obligation.

2. When the conduct of the State has created a situation not in conformity with the result required of it by an international obligation, but the obligation allows that this or an equivalent result may nevertheless be achieved by subsequent conduct of the State, there is a breach of the obligation only if the State also fails by its subsequent conduct to achieve the result required of it by that obligation.

Article 22. Exhaustion of local remedies

When the conduct of a State has created a situation not in conformity with the result required of it by an international obligation concerning the treatment to be accorded to aliens, whether natural or juridical persons, but the obligation allows that this or an equivalent result may nevertheless be achieved by subsequent conduct of the State, there is a breach of the obligation only if the aliens concerned have exhausted the effective local remedies available to them without obtaining the treatment called for by the obligation or, where that is not possible, an equivalent treatment.

Article 23. Breach of an international obligation to prevent a given event

When the result required of a State by an international obligation is the prevention, by means of its own choice, of the occurrence of a given event, there is a breach of that obligation only if, by the conduct adopted, the State does not achieve that result.

Article 24. Moment and duration of the breach of an international obligation by an act of the State not extending in time

The breach of an international obligation by an act of the State not extending in time occurs at the moment when that act is performed. The time of commission of the breach does not extend beyond that moment, even if the effects of the act of the State continue subsequently.

Article 25. Moment and duration of the breach of an international obligation by an act of the State extending in time

1. The breach of an international obligation by an act of the State having a continuing character occurs at the moment when that act begins. Nevertheless, the time of commission of the breach extends over the entire period during which the act continues and remains not in conformity with the international obligation.

2. The breach of an international obligation by an act of the State, composed of a series of actions or omissions in respect of separate cases, occurs at the moment when that action or omission of the series is accomplished which establishes the existence of the composite act. Nevertheless, the time of commission of the breach extends over the entire period from the first of the actions or omissions constituting the composite act not in conformity with the international obligation and so long as such actions or omissions are repeated.

3. The breach of an international obligation by a complex act of the State, consisting of a succession of actions or omissions by the same or different organs of the State in respect of the same case, occurs at the moment when the last constituent element of that complex act is accomplished. Nevertheless, the time of commission of the breach extends over the entire period between the action or omission which initiated the breach and that which completed it.

Article 26. Moment and duration of the breach of an international obligation to prevent a given event

The breach of an international obligation requiring a State to prevent a given event occurs when the event begins. Nevertheless, the time of commission of the breach extends over the entire period during which the event continues.

CHAPTER IV

IMPLICATION OF A STATE IN THE INTERNATIONALLY WRONGFUL ACT OF ANOTHER STATE

Article 27. Aid or assistance by a State to another State for the commission of an internationally wrongful act

Aid or assistance by a State to another State, if it is established that it is rendered for the commission of an internationally wrongful act carried out by the latter, itself constitutes an internationally wrongful act, even if, taken alone, such aid or assistance would not constitute the breach of an international obligation.

Article 28. Responsibility of a State for an internationally wrongful act of another State

1. An internationally wrongful act committed by a State in a field of activity in which that State is subject to the power of direction or control of another State entails the international responsibility of that other State.

2. An internationally wrongful act committed by a State as the result of coercion exerted by another State to secure the commission of that act entails the international responsibility of that other State.

3. Paragraphs 1 and 2 are without prejudice to the international responsibility, under the other articles of the present draft, of the State which has committed the internationally wrongful act.

CHAPTER V

CIRCUMSTANCES PRECLUDING WRONGFULNESS

Article 29. Consent

1. The consent validly given by a State to the commission by another State of a specified act not in conformity with an obligation of the latter State towards the former State precludes the wrongfulness of the act in relation to that State to the extent that the act remains within the limits of that consent.

2. Paragraph 1 does not apply if the obligation arises out of a peremptory norm of general international law. For the purposes of the present draft articles, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Article 30. Countermeasures in respect of an internationally wrongful act

The wrongfulness of an act of a State not in conformity with an obligation of that State towards another State is precluded if the act constitutes a measure legitimate under international law against that other State, in consequence of an internationally wrongful act of that other State.

Article 31. Force majeure and fortuitous event

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act was due to an irresistible force or to an unforeseen external event beyond its control which made it materially impossible for the State to act in conformity with that obligation or to know that its conduct was not in conformity with that obligation.

2. Paragraph 1 shall not apply if the State in question has contributed to the occurrence of the situation of material impossibility.

Article 32. Distress

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the conduct which constitutes the act of that State had no other means, in a situation of extreme distress, of saving his life or that of persons entrusted to his care.

2. Paragraph 1 shall not apply if the State in question has contributed to the occurrence of the situation of extreme distress or if the conduct in question was likely to create a comparable or greater peril.

Article 33. State of necessity

1. A state of necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act of that State not in conformity with an international obligation of the State unless:

(*a*) the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril; and

(*b*) the act did not seriously impair an essential interest of the State towards which the obligation existed.

2. In any case, a state of necessity may not be invoked by a State as a ground for precluding wrongfulness:

(*a*) if the international obligation with which the act of the State is not in conformity arises out of a peremptory norm of general international law; or

(*b*) if the international obligation with which the act of the State is not in conformity is laid down by a treaty which, explicitly or implicitly, excludes the possibility of invoking the state of necessity with respect to that obligation; or

(*c*) if the State in question has contributed to the occurrence of the state of necessity.

Article 34. Self-defence

The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

Article 35. Reservation as to compensation for damage

Preclusion of the wrongfulness of an act of a State by virtue of the provisions of articles 29, 31, 32 or 33 does not prejudge any question that may arise in regard to compensation for damage caused by that act.

2. TEXT OF ARTICLES 33 TO 35, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTY SECOND SESSION

Article 33. State of necessity

1. A state of necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act of that State not in conformity with an international obligation of the State unless:

(*a*) the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril; and

(*b*) the act did not seriously impair an essential interest of the State towards which the obligation existed.

2. In any case, a state of necessity may not be invoked by a State as a ground for precluding wrongfulness:

(*a*) if the international obligation with which the act of the State is not in conformity arises out of a peremptory norm of general international law; or

(*b*) if the international obligation with which the act of the State is not in conformity is laid down by a treaty which, explicitly or implicitly, excludes the possibility of invoking the state of necessity with respect to that obligation; or

(*c*) if the State in question has contributed to the occurrence of the state of necessity.

Commentary

(1) The term "state of necessity" is used by the Commission to denote the situation of a State whose sole means of safeguarding an essential interest threatened by a grave and imminent peril is to adopt conduct not in conformity with what is required of it by an international obligation to another State.

(2) A state of necessity is a situation which is particularly clearly distinguishable from other concepts. It differs from the circumstances precluding wrongfulness contemplated in articles 29 (Consent), 30 (Countermeasure in respect of an internationally wrongful act) and 34 (Self-defence) by the fact that, contrary to what happens in those other circumstances, the wrongfulness of an act committed in a state of necessity is not precluded by the pre-existence, in the case concerned, of a particular course of conduct by the State acted against. In the case envisaged in article 29, for example, the existence of such prior conduct is the *sine qua non* whereby the act of the State is rid of its wrongfulness. The conduct i question is represented by the expression of consent t the commission by the latter State of an act not i conformity with an obligation binding it to th "consenting State". In the case provided for in articl 30, the conduct in question is represented by the prio commission, by the State acted against, of a internationally wrongful act. In the case envisaged i article 34, it consists in the commission, once again b the State acted against, of the particularly seriou offence of wrongful recourse to armed force. In th case provided for in the present article, on the othe hand, the preclusion of the wrongfulness of an act of State not in conformity with an international obligatio to another State is totally independent of the conduc adopted by the latter. In determining whether th wrongfulness is precluded by a state of necessity, ther is no need to ascertain whether the State in questio had consented to or previously committed an internationally wrongful act, or engaged in aggression. Thi last possibility will be especially important in distinguishing the circumstance precluding wrongfulnes dealt with in the present article from the one to be deal with in article 34, namely self-defence. In both case the act which in other circumstances would b wrongful is an act dictated by the need to meet a grav and imminent danger which threatens an essentia interest of the State; for self-defence to be invokabl however, this danger must have been caused by th State acted against and be represented by that State' use of armed force.

(3) Conversely, the irrelevance of the prior conduc of the State which has suffered the act it is sought t justify is a feature common to a state of necessity an to the circumstances dealt with in articles 31 (*Forc majeure* and fortuitous event) and 32 (Distress). A further shared feature is therefore that the State mus have been induced by an external factor to adop conduct not in conformity with the internation obligation. In the case contemplated in article 31 however, the factor is one making it materiall impossible for the persons whose conduct is attribut to the State either to adopt conduct in conformity wi the international obligation or to know that his conduc conflicts with the conduct required by the internationa obligation. The conduct adopted by the State i therefore either unintentional *per se* or unintentionall in breach of the obligation. In the case of a state c necessity, on the other hand, the deliberate nature c the conduct, the intentional aspect of its failure t conform with the international obligation are not onl undeniable but in some sense logically inherent in th justification alleged; invoking a state of necessit implies perfect awareness of having deliberately chos to act in a manner not in conformity with a international obligation. The case provided for i article 32 lies somewhere between the two. The person acting on behalf of the State are admittedly not oblig materially to adopt, quite unintentionally, a course c conduct not in conformity with what is required by a

Exhibit LC-M 45

UNITED
NATIONS

General Assembly

Distr.
GENERAL

A/CN.4/380
4 April 1984

ORIGINAL: ENGLISH

INTERNATIONAL LAW COMMISSION
Thirty-sixth session
May-27 July 1984

FIFTH REPORT ON THE CONTENT, FORMS AND DEGREES OF STATE RESPONSIBILITY

(PART TWO OF THE DRAFT ARTICLES)

by

Mr. Willem Riphagen, Special Rapporteur

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 8	2
II.	DRAFT ARTICLES		4

Article 10: compare paragraphs 58 *et seq*. of chapter II of the fourth report. 6/

Article 11: compare paragraphs 43 *et seq*. and paragraph 78 of chapter II of the fourth report. 6/

Article 12: compare article 4 and commentary, as proposed in the third report; 7/ see also paragraph 59 of the second report. 8/

Article 13: compare paragraphs 54 and 84 of chapter II of the fourth report. 6/

Article 14, paragraph 1: *idem*; see also article 6 and commentary, as propose in the third report. 9/

Article 15: *idem*; see also paragraphs 6 and 7 above.

Article 16: compare paragraphs 80 and 81 of chapter II of the fourth report; 6/ see also article 12 (a) as now proposed.

II. DRAFT ARTICLES

Article 1

The international responsibility of a State which, pursuant to the provisions of Part One, arises from an internationally wrongful act committed by that State, entails legal consequences as set out in the present Part.

Article 2

Without prejudice to the provisions of articles 4 and 12, the provisions of this Part govern the legal consequences of any internationally wrongful act of a State, except where and to the extent that those legal consequences have been determined by other rules of international law relating specifically to the internationally wrongful act in question.

7/ A/CN.4/354 and Corr.1, Add.1 and Add.1/Corr.1 (Chinese only), and Add.2 chap. VI, para. 139.

8/ *Yearbook ... 1981*, vol. II (Part One), p. 86, document A/CN.4/344.

9/ A/CN.4/354 and Corr.1, Add.1 and Add.1/Corr.1 (Chinese only), and Add.2 chap. VI, para. 141.

Article 3

Without prejudice to the provisions of articles 4 and 12, the rules of customary law shall continue to govern the legal consequences of an internationally wrongful act of a State not set out in the provisions of the present Part.

Article 4

The legal consequences of an internationally wrongful act of a State set out in the provisions of the present Part are subject, as appropriate, to the provisions and procedures of the Charter of the United Nations relating to the maintenance of international peace and security.

Article 5

For the purposes of the present articles "injured State" means:

(a) if the internationally wrongful act constitutes an infringement of a right appertaining to a State by virtue of a customary rule of international law or of a right arising from a treaty provision for a third State, the State whose right has been infringed;

(b) if the internationally wrongful act constitutes the breach of an obligation imposed by a judgement or other binding dispute settlement decision of an international court or tribunal, the other State party or States parties to the dispute;

(c) if the internationally wrongful act constitutes a breach of an obligation imposed by a bilateral treaty, the other State party to the treaty;

(d) if the internationally wrongful act constitutes a breach of an obligation imposed by a multilateral treaty, a State party to that treaty, if it is established that:

(i) the obligation was stipulated in its favour, or

(ii) the breach of the obligation by one State party necessarily affects the exercise of the rights or the performance of the obligations of all other States parties, or

(iii) the obligation was stipulated for the protection of collective interests of the States parties, or

(iv) the obligation was stipulated for the protection of individual persons, irrespective of their nationality;

(e) if the internationally wrongful act constitutes an international crime, all other States.

/...

Article 6

1. The injured State may require the State which has committed an internationally wrongful act to:

(a) discontinue the act, to release and return the persons and objects held through such act, and to prevent continuing effects of such act; and

(b) apply such remedies as are provided for in its internal law; and

(c) subject to article 7, re-establish the situation as it existed before the Act; and

(d) provide appropriate guarantees against repetition of the act.

2. To the extent that it is materially impossible to act in conformity with paragraph 1 (c), the injured State may require the State which has committed the internationally wrongful act to pay to it a sum of money corresponding to the value which a re-establishment of the situation as it existed before the breach, would bear.

Article 7

If the internationally wrongful act is a breach of an international obligation concerning the treatment to be accorded by a State, within its jurisdiction, to aliens, whether natural or juridical persons, and the State which has committed the internationally wrongful act does not re-establish the situation as it existed before the breach, the injured State may require that State to pay to it a sum of money corresponding to the value which a re-establishment of the situation, as it existed before the breach, would bear.

Article 8

Subject to articles 11 to 13, the injured State is entitled, by way of reciprocity, to suspend the performance of its obligations towards the State which has committed an internationally wrongful act, if such obligations correspond to, or are directly connected with, the obligation breached.

Article 9

1. Subject to articles 10 to 13, the injured State is entitled, by way of reprisal, to suspend the performance of its other obligations towards the State which has committed the internationally wrongful act.

2. The exercise of this right by the injured State shall not, in its effects, be manifestly disproportional to the seriousness of the internationally wrongful act committed.

/...

Article 10

1. No measure in application of article 12 may be taken by the injured State until it has exhausted the international procedures for peaceful settlement of the dispute available to it in order to ensure the performance of the obligations mentioned in article 6.

2. Paragraph 1 does not apply to:

(a) interim measures of protection taken by the injured State within its jurisdiction, until a competent international court or tribunal, under the applicable international procedure for peaceful settlement of the dispute, has decided on the admissibility of such interim measure of protection;

(b) measures taken by the injured State if the State alleged to have committed the internationally wrongful act fails to comply with an interim measure of protection ordered by such international court or tribunal.

Article 11

1. The injured State is not entitled to suspend the performance of its obligations towards the State which has committed the internationally wrongful act to the extent that such obligations are stipulated in a multilateral treaty to which both States are parties and it is established that:

(a) the failure to perform such obligations by one State party necessarily affects the exercise of the rights or the performance of obligations of all other States parties to the treaty; or

(b) such obligations are stipulated for the protection of collective interests of the States parties to the multilateral treaty; or

(c) such obligations are stipulated for the protection of individual persons irrespective of their nationality.

2. The injured State is not entitled to suspend the performance of its obligations towards the State which had committed the internationally wrongful act if the multilateral treaty imposing the obligations provides for a procedure of collective decisions for the purpose of enforcement of the obligations imposed by it, unless and until such collective decision, including the suspension of obligations towards the State which has committed the internationally wrongful act, has been taken; in such case subparagraphs 1 (a) and 1 (b) do not apply to the extent that such decision so determines.

/...

Article 12

Articles 8 and 9 do not apply to the suspension of obligations:

(a) of the receiving State regarding the immunities to be accorded to diplomatic and consular missions and staff;

(b) of any State by virtue of a peremptory norm of general international law.

Article 13

If the internationally wrongful act committed constitutes a manifest violation of obligations arising from a multilateral treaty, which destroys the object and purpose of that treaty as a whole, article 10 and article 11, subparagraphs 1 (a) and 1 (b) and paragraph 2, do not apply.

Article 14

1. An international crime entails all the legal consequences of an internationally wrongful act and, in addition, such rights and obligations as are determined by the applicable rules accepted by the international community as a whole.

2. An international crime committed by a State entails an obligation for every other State:

(a) not to recognise as legal the situation created by such crime; and

(b) not to render aid or assistance to the State which has committed such crime in maintaining the situation created by such crime; and

(c) to join other States in affording mutual assistance in carrying out the obligations under subparagraphs (a) and (b).

3. Unless otherwise provided for by an applicable rule of general international law, the exercise of the rights arising under paragraph 1 of the present article and the performance of the obligations arising under paragraphs 1 and 2 of the present article are subject, mutatis mutandis, to the procedures embodied in the United Nations Charter with respect to the maintenance of international peace and security.

4. Subject to Article 103 of the United Nations Charter, in the event of conflict between the obligations of a State under paragraphs 1, 2 and 3 of the present article and its rights and obligations under any other rule of international law, the obligations under the present article shall prevail.

/...

Article 15

An act of aggression entails all the legal consequences of an international crime and, in addition, such rights and obligations as are provided for in or by virtue of the United Nations Charter.

Article 16

The provisions of the present article shall not prejudge any question that may arise in regard to:

(a) the invalidity, termination and suspension of the operation of treaties;

(b) the rights of membership of an international organisation;

(c) belligerent reprisals.

UNITED NATIONS

GENERAL
ASSEMBLY

Distr.
GENERAL

A/CN.4/380/Corr.1
28 May 1984

Original: ENGLISH

INTERNATIONAL LAW COMMISSION
Thirty-sixth session
7 May-27 July 1984

FIFTH REPORT ON THE CONTENT, FORMS AND DEGREES OF STATE RESPONSIBILITY

(PART TWO OF THE DRAFT ARTICLES)

by

Mr. Willem Riphagen, Special Rapporteur

Corrigendum

1. At the end of paragraph 5, change the parenthetical phrase to read "(see articles 8 and 9 as now proposed)."

2. In chapter II, "Draft articles", the reference in the first line of article 10, paragraph 1, to "article 12" should be changed to "article 9".

Exhibit LC-M 46

THE
BRITISH YEAR BOOK OF INTERNATIONAL LAW
1953

THIRTIETH YEAR OF ISSUE

Issued under the auspices of the
Royal Institute of International Affairs

GEOFFREY CUMBERLEGE
OXFORD UNIVERSITY PRESS
LONDON NEW YORK TORONTO
1954

> United States claims to exercise consular jurisdiction and other capitulatory rights. On the other hand, the Court can not ignore the general tenor of the correspondence, which indicates that at all times France and the United States were looking for a solution based upon mutual agreement and that neither Party intended to concede its legal position.'[1]

(2) *Too much account should not be taken of superficial contradictions and inconsistencies.* In the *Fisheries* case, the Court said (*I.C.J.*, 1951, p. 138):

> 'The Court considers that too much importance need not be attached to the few uncertainties or contradictions, real or apparent, which the United Kingdom Government claims to have discovered in the Norwegian practice.'

A similar warning (though in a different context) against attaching too much importance to superficial considerations was given by Judge Basdevant in the *Ambatielos* case (First Phase), where he said (*I.C.J.*, 1952, pp. 69–70):

> 'The drafting and the signature of an international agreement are the acts by means of which the will of the contracting States is expressed; ratification is the act by which the will so expressed is confirmed by the competent authority, for the purpose of giving it binding force. All these acts are concerned with the substance itself of an international agreement. But the recording of these acts in the instruments which are designed to give them material existence involves the physical operations of writing, printing, transmission by one party to the other, etc., operations which do not contribute to the formation of the will of the contracting States; those who have the task of forming, expressing or confirming this will, do not, as a rule, take part in these physical operations; these operations commonly take a form deriving from tradition, which is followed scrupulously, and therefore blindly, by the officials entrusted with this material task. It would be wrong to attribute to the details of form thus superimposed upon the juridical act of the conclusion of a treaty any determining influence, when it becomes necessary, in case of doubt, to ascertain the true meaning of the agreement which has been reached, the character which the parties intended to give to any given agreement concluded between them.
>
> 'The scope to be given to a particular expression employed, or to a particular form which has been followed, should be considered in the light of these remarks when it is sought to determine whether the Declaration of 1926 is to be regarded as constituting a provision of the Treaty of the same date.'

(3) *A statement or act may fairly be interpreted as an admission when it appears to embody or represent the bona fide belief of the party making it.* In the *Minquiers* case such a view seems to have underlain the following pronouncement[2] (*I.C.J.*, 1953, p. 71):

---

[1] The jointly dissenting Judges in the *Morocco* case (Hackworth, Badawi, Levi Carneiro and Rau) took a different view of this correspondence (*I.C.J.*, 1952, p. 216):

> 'In the light of these statements, it seems clear that in 1937, the French Government regarded the United States as entitled to avail itself of the capitulatory regime even after the Anglo-French Convention of 1937. We concur in this view. . . .

[2] Judge Basdevant in his separate though (on the main issue) concurring Opinion, took a different view of the incidents concerned. His remarks on the first may be cited in full and in original (*I.C.J.*, 1953, pp. 80–81):

> 'Sur le premier point, on doit déterminer l'effet de la lettre du ministre français de la Marine,

Exhibit LC-M 47

TRANSLATION

TELEGRAM

18 April 1938

FROM : GOVERNMENT, TRIPOLI

TO : ITALIAN MINISTRY OF AFRICA AND MINISTRY OF FOREIGN AFFAIRS

SUBJECT : Frontier Incident

3469 - Urgent - I refer to the serious boundary incidents which occurred recently in the area of Jef-Jef.

Following the Mussolini-Laval 1935 Agreements, French military authorities took the initiative to put along the caravan route Tekro-Maaten-Sarra a stub which, corresponding approximately to the meeting point of the route itself with the border line indicated by the new agreements, should, according to French intentions, set the limit of the respective activity between Libya and French Equatorial Africa.

The authorities verbally informed our authorities of the above mentioned. Our authorities noted that the stub had been moved 20 km north of the meeting point it should have marked.

Last November, in order to facilitate the caravan traffic Faia-Koufra, I gave orders to dig a well in a location situated 80 km north of the above mentioned stub and 150 km south of the Maaten-Sarra (caravan route).

The works for the well (to which six indigenous workers were assigned) were still in process when, according to informations transmitted via cable yesterday by the Commander of Libyan Sahara, around the end of March (at a date not precisely indicated) a French officer, commander of Tekro, penetrated with armed forces in our territory and set up a new stub at 30 km north of the well under construction and at 110 km north of the previous stub and forced the workers to follow him to Tekro seizing tents and tools.

Second part will follow.

Signed

Balbo

TRANSLATION

TELEGRAM N° 100433

Rome, 22 April 1938

FROM : ITALIAN MINISTRY OF AFRICA

TO : GOVERNOR GENERAL, TRIPOLI

54638 Secret. Doc. 3469. Jef-Jef Area.

Foreign Affairs takes diplomatic steps required. It will be preferable that none of our officers goes to Tekro. As to the position of first and second French stub and that of our well, I ask Your Excellency to establish the control of distances in kilometres indicated both in relation to Mussolini-Laval border line and in relation to the Maaten-Sarra location, sending urgently topographic sketch.

Signed

Bitossi

TRANSLATION

TELEGRAM

Rome, 26 April 1938

FROM : MINISTRY OF FOREIGN AFFAIRS
TO : ITALIAN EMBASSY, PARIS
SUBJECT : Frontier incident along Sarra-Tekro Caravan Route

The General Government of Libya has informed (us) that in an area included between the current border of Libya and the border resulting from the Mussolini-Laval 1935 agreements, i.e. on the caravan route between the Sarra wells, in Libyan territory, and Tekro, in French Equatorial Africa, at the end of last March, the French officer commander of the Tekro post has forbidden some of our workers to continue the works for the digging of a well: said officer has also ordered those workers to follow him to Tekro and has seized their tents and tools. On the 18th the workers have been repatriated to Libya and the tents and tools have been returned.

Once the General Government of Libya became aware of these facts it ordered that the works for the digging of the well start again and sent other workers, protected by a troop of the Saharan Company of Koufra.

I ask Your Excellency to seize the Quai d'Orsay on the matter.

The works have a peaceful character. The digging of the well is done in the interest of the populations and to facilitate caravan trade in the area of Koufra and French Equatorial Africa.

In relation to the fact that, as has been referred by the General Government of Libya, the French would have placed on the above mentioned caravan routes stubs to indicate the boundary, Your Excellency will also be able to say that it does not seem to be appropriate for the moment to place stubs which will have to be put by mutual agreement once we shall be able to delimit the border on the ground.

I await communications on the matter.

(Signature)

" De mon côté, j'observe que les accords du 7 janvier 1935 ne constituent pas une cession du territoire en question à l'Italie, mais simplement la reconnaissance d'une souveraineté que l'Italie a constamment et sans interruption revendiquée. Il me semble donc que cette souveraineté, du fait qu'elle est exercée dans la zone sans être en conflit avec l'exercice de la souveraineté française, n'a pas besoin du perfectionnement, grâce à l'échange des ratifications, des accords du 7 janvier 1937" (souligné dans l'original).

Tripoli, 1 August 1938 - XVI

GOVERNOR GENERAL OF LIBYA

N° 1370

SUBJECT : Frontier incident along the Sarra-Tekro caravan route.

REFERENCE : Doc.110340 dated 8 July.

ITALIAN MINISTER OF AFRICA
General Direction of Civil Affairs

ITALIAN FOREIGN MINISTRY
General Direction of External Affairs

With the above mentioned document the Ministry informs me of the answer that the Quai d'Orsay addressed to our Embassy in Paris about the incident that occurred along the Sarra-Tekro caravan route. It does not however inform me of its opinion nor of that of the Ministry of Foreign Affairs on the answer itself.

On my part I note that the agreements of 7 January do not represent a cession to Italy of the territory in question, but simply the recognition of a sovereignty that Italy has constantly and uninterruptedly claimed. It thus seems to me that such sovereignty to be exercised in the area where it is in contrast with the exercise of French sovereignty does not require that of the 7 January 1935 agreements be perfected through the exchange of ratifications.

Undoubtedly, if Italy had wanted, before 1 [words missing] to vindicate its good right to extend the boundaries of Libya south of Tibesti up to Chad, trying to exercise its sovereignty in those regions, it would have necessarily clashed with French sovereignty which, like today, was even then exercised fully and effectively. In fact, for reasons of political opportunity, such attempts were never (put in discussion).

But in the area north of Tibesti, France, with the exception [words missing]

Where it keeps a garrison, never asserted its sovereignty before 1935, but only sustained theoretically its claim to it; the same did Italy, which however gave its claim a content, which was thin but substantial, carrying out in the area an activity of troops and recognition and exercising jurisdiction over the indigenous nomadic populations gravitating on Koufra.

In other words, there exists a factual situation that the 1935 agreements have not yet, in the international legal field, modified, since the ratifications of the agreements have not been exchanged yet, but, that, once the exchange of ratifications has taken place, will be modified in our favour, with an extension of our sovereignty, in comparison with that effectively exercised up until now.

I do not understand how in these circumstances France could claim to modify this state of fact - however temporarily - in its favour, i.e. extending its sovereignty or contesting ours in the area under discussion, and mostly how and why Italy admits or lets France impose such modification, which not only hurts its dignity, but which is contrary to its interests and detrimental for the future, in the hypothesis, however improbable, that the perfecting of the 1935 agreements should never take place.

The Governor General

(Signed Balbo)

Exhibit LC-M 49

MÉLANGES

OFFERTS A

PAUL REUTER

Le droit international : unité et diversité

PARIS
ÉDITIONS A. PEDONE
13, Rue Soufflot, 13

à la même Puissance coloniale, la ligne administrative a été déplacée au détriment de l'Etat protégé, dont l'Etat protecteur était précisément tenu d'assurer l'intégrité territoriale, l'*uti possidetis* consacre immanquablement une injustice grave. Comme l'a démontré le professeur Reuter, « on comprend certes que tout un continent, l'Amérique du Sud, ait choisi au lendemain de l'indépendance, comme limite des nouveaux Etats, les frontières administratives arrêtées par le colonisateur espagnol ; pour artificielles que soient souvent ces dernières, aucun motif inavouable, aucune intention de spoliation ne les avait inspirées ; on peut comprendre de même que dans d'autres parties du monde, pour des raisons analogues, de nouveaux Etats se fassent une sagesse de suivre le même principe. Mais lorsque des lignes divisoires ont été modifiées aux dépens d'un Etat protégé, mais au bénéfice d'un territoire sur lequel le colonisateur exerçait des droits plus étendus que ceux du protectorat, on peut se demander quelle est sur le plan des principes, et une fois la colonisation terminée, la valeur de ces lignes » (88). L'équité peut alors contribuer à la solution de différends frontaliers de cette nature. Il est difficile sans doute de les soumettre à l'appréciation judiciaire, mais de telles considérations qui correspondent au « sentiment sûr et spontané du juste et de l'injuste » ne doivent pas être ignorées par ceux qui veulent, de bonne foi, assurer la stabilité dans la région (89).

III

23. — L'équité peut contribuer enfin au tracé de la ligne frontière dans des régions dont le statut est si indéterminé qu'elles ne connaissent pas de limites historiques.

Sans doute, l'organe juridictionnel ou arbitral, chargé de procéder à la délimitation, peut-il être tenté, dans des situations de ce genre plus encore que dans tout autre, de partager l'opinion d'Albert Gallatin, l'agent du Gouvernement américain dans l'affaire de la frontière nord-est entre les Etats-Unis et la Grande-Bretagne, qui remarquait à propos de la sentence rendue dans ce différend, le 10 juin 1831, par le Roi des Pays-Bas : « An arbitrator, whether he be king or farmer, rarely decides on strict principle of law. He

---

(88) Préface de l'ouvrage de M. Sarin Chhak, *Les frontières du Cambodge*, Dalloz, 1966, pp. 11-12.

(89) On trouve un écho de ce débat dans les plaidoiries prononcées devant la Cour, dans l'affaire du Sahara occidental, par le professeur Salmon, le 4 juillet 1975 (CR 75/13, pp. 49-51), le professeur Dupuy, le 25 juillet (CR 75/28, pp. 50-51) et l'ambassadeur Bedjaoui, le 29 juillet (CR 75/31, pp. 30-36).

Exhibit LC-M 50

BRITISH YEAR BOOK OF INTERNATIONAL LAW

1972-1973

FORTY-SIXTH YEAR OF ISSUE

Published for
THE ROYAL INSTITUTE OF
INTERNATIONAL AFFAIRS
by
OXFORD UNIVERSITY PRESS, LONDON
1975

THE
BRITISH YEAR BOOK OF INTERNATIONAL LAW
1972–1973

FORTY-SIXTH YEAR OF ISSUE

Published for
THE ROYAL INSTITUTE OF
INTERNATIONAL AFFAIRS
by
OXFORD UNIVERSITY PRESS, LONDON
1975

discussed above, it is evident that discretion of the tribunal will be progressively limited as the boundary is more closely defined. In the allocation of territory the tribunal will be most free to take account of the widest considerations of policy.[1] Once territory has been allocated on the basis of some principle—such as *uti possidetis*—the range of discretion is necessarily narrowed, and will be progressively more attenuated as the boundary is more closely defined by custom, treaty or prior award, until, in disputes at the demarcation stage, the tribunal has scope only to make minor adjustments to fit the boundary as defined to the ground.

---

[1] As an 'allocation' question in an unusual context the I.C.J. advisory opinion on the *Status of South-West Africa* may be instanced—an opinion in which broad policy considerations may be regarded as having been paramount.

Exhibit LC-M 51

REPORTS OF INTERNATION
ARBITRAL AWARDS

RECUEIL DES SENTENCES
ARBITRALES

VOLUME II

NATIONS UNIES — UNITED NATIONS

purpose to reach a definitive settlement that the Parties provided, in Article XIV of the Treaty, that the award "shall decide the boundary controversy finally", and, in Article XII, that the Tribunal shall have "the necessary authority to settle by itself any difference which may arise with regard to the interpretation or carrying out of this Treaty and the decisions of the said Tribunal". While by Article V the Parties recorded their agreement that the only juridical line which can be established between their respective countries is that of the *uti possidetis* of 1821 and that the Tribunal shall determine this line, it was also recognized that the Tribunal might find that interests had been established beyond the line of *uti possidetis* which should be taken into account "in establishing the definitive boundary". Accordingly, the Parties agreed that in determining that boundary "the Tribunal shall modify as it may see fit the line of *uti possidetis* of 1821 and shall fix the territorial or other compensation which it may deem just that either Party should pay to the other".

In the light of the declared purpose of the Treaty, the Tribunal is not at liberty to conclude that the lack of adequate evidence to establish the line of *uti possidetis* of 1821, throughout the entire territory in dispute, relieves the Tribunal of the duty to determine the definitive boundary to its full extent. The Tribunal, by the provision of the Treaty as to the line of *uti possidetis* of 1821, is not required to perform the impossible, and manifestly is bound to establish that line only to the extent that the evidence permits it to be established. And as the Tribunal is expressly authorized in the interests of justice, as disclosed by subsequent developments, to depart from the line of *uti possidetis* of 1821, even where that line is found to exist, the Treaty must be construed as empowering the Tribunal to determine the definitive boundary as justice may require throughout the entire area in controversy, to the end that the question of territorial boundaries may be finally and amicably settled.

The criteria to be applied by the Tribunal in the exercise of this authority are plainly indicated. It is not the function of the Tribunal to fix territorial limits in its view of what might be an appropriate division of the territory merely with reference to geographical features or potential advantages of a military or economic character, apart from the historical facts of development. The Treaty cannot be construed as authorizing the Tribunal to establish a definitive boundary according to an idealistic conception, without regard to the settlement of the territory and existing equities created by the enterprise of the respective Parties. So far as may be found to be consistent with these equities, the geographical features of the territory indicating natural boundaries may be considered.

In fixing the boundary, the Tribunal must have regard (1) to the facts of actual possession; (2) to the question whether possession by one Party has been acquired in good faith, and without invading the right of the other Party; and (3) to the relation of territory actually occupied to that which is as yet unoccupied. In the light of the facts as thus ascertained, questions of compensation may be determined.

Article XIII of the Treaty provides: "The High Contracting Parties empower the Tribunal to appoint committees of investigation, to utilize the service of experts and resort to other means of information which it may deem necessary for ascertaining the facts. They also empower it to organize the subordinate personnel of the Tribunal, in such form as it may deem desirable. To this end the Parties undertake to place at the service of the Tribunal such facilities as may be necessary."

Exhibit LC-M 52

INTERNATIONAL LAW REPORTS

Volume
50

EDITED
BY
E. LAUTERPACHT, Q.C.
OF GRAY'S INN;
FELLOW OF TRINITY COLLEGE, CAMBRIDGE

LONDON
BUTTERWORTHS
1976

boundary shall go in a straight line through the middle of the first-mentioned circle and touch the second circle as depicted on Map C. Point " E " lies where that line reaches the boundary symbols on the northern edge of the Rann. From Point " G ", the boundary shall go straight west until at Point " F " it reaches the straight line originating at Point " E ". From Point " G " it shall proceed to Point " H ", touching the outer points of the two tongues of land as depicted on Map C. From Point " H ", the boundary shall go in a straight line north-northeast until it reaches the boundary symbols appearing on the most recent survey map of that sector, Indian Map B–33. That point is called Point " K ".

As from Point " K ", and until the Eastern Terminus, the boundary shall follow the boundary symbols appearing on the other maps and the plane-table section which form part of Map C, being Indian Maps B–33, B–34, B–35, Pakistan Map 103 and Indian Map TB–28, with the following deviations (Indian Map TB–28 of 1938 being chosen in preference to Pakistan Map 137 of 1881, which choice in my opinion finds support in the " Minutes of the Meeting held at Lahore and Amritsar from 25th to 28th March 1959 in connection with the Demarcation of Rajasthan (India)—West Pakistan Boundary "):

(*a*) The two deep inlets on either side of Nagar Parkar will constitute the territory of Pakistan. Already in 1885, the Deputy Commissioner of Thar Parkar pointed out that if these inlets were to be considered Kutch territory,

> " [a] glance at the map will show that Parkar would be a peninsula almost entirely surrounded by Kutch territory. The Kutch State could erect fortifications and establish Custom houses at places situated many miles within the district for instance close to Veerawah, or on some of the roads which, crossing inlets of the Runn, lead from one part of this district to another." (Pak. Doc. B.9.)

In my opinion it would be inequitable to recognize these inlets as foreign territory. It would be conducive to friction and conflict. The paramount consideration of promoting peace and stability in this region compels the recognition and confirmation that this territory, which is wholly surrounded by Pakistan territory, also be regarded as such. The points where the boundary will thus cut off the two inlets are these:

At the western inlet, the boundary will leave the boundary symbols indicated on Indian Map B–34 at the point marked thereon as " 26 ", more precisely where the cart track is indicated as departing from the edge of the Rann in a southeasterly direction. This point is indicated as Point " L " on Map C. On the other side of the inlet, the point will be that where the camel track is indicated on Indian Map B–34 to reach the edge of the Rann; that point is in-

CERTIFICATION

I, the undersigned, Abdulati Ibrahim El-Obeidi, Agent of the Great Socialist People's Libyan Arab Jamahiriya, hereby certify that the copy of each document attached in Volume 2 of the Counter-Memorial submitted by the Great Socialist People's Libyan Arab Jamahiriya is an accurate copy; and that all translations are accurate translations.

(Signed) ______________________

Abdulati Ibrahim El-Obeidi

Agent of the Great Socialist
People's Libyan Arab Jamahiriya

On peut acquérir les publications de la COUR INTERNATIONALE DE JUSTICE auprès des librairies spécialisées du monde entier. Pour tous renseignements, prière de s'informer à l'adresse suivante :

United Nations Publications, 300 East 42nd Street, Room IN-919 J, New York, NY 10017, Etats-Unis d'Amérique. Tél. (+1-212) 963 83 02. Télécopie (+1-212) 963 34 89. Adresse électronique : publications@un.org

Pour toutes questions autres que l'achat de publications, s'adresser à *Monsieur le Greffier de la Cour internationale de Justice, Palais de la Paix, 2517 KJ La Haye, Pays-Bas*. Tél. (+3170) 302 23 23. Télécopie (+3170) 364 99 28. Adresse électronique : mail@icj-cij.org

The publications of the INTERNATIONAL COURT OF JUSTICE may be ordered from any bookseller. For information regarding the sale of the Court's publications please write to the following :

United Nations Publications, 300 East 42nd Street, Room IN-919 J, New York, NY 10017, United States of America. Tel. (+1-212) 963 83 02. Fax (+1-212) 963 34 89. E-mail : publications@un.org

All enquiries other than with regard to purchase of publications should be addressed to the *Registrar of the International Court of Justice, Peace Palace, 2517 KJ The Hague, Netherlands*. Tel. (+3170) 302 23 23. Fax (+3170) 364 99 28. E-mail : mail@icj-cij.org

IMPRIMÉ EN FRANCE
PRINTED IN FRANCE

9 789210 711289

ISSN 0074-4433
ISBN 978-92-1-071128-9